

**Decentralisation and Municipalities in South Africa:
An Analysis of The Mandate to Deliver Basic Services**

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Anne Stanton
932431873

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DECLARATION

I declare that this dissertation is my own unaided work. All citations, references and borrowed ideas have been duly acknowledged. None of the present work has been submitted previously for any degree or examination in any other University.

Student name

Date

ABSTRACT

This thesis investigates the challenges facing local government in South Africa by developing a means of exploring to what extent the problems of providing basic services currently experienced by municipalities are influenced by the political, administrative and financial configuration of the decentralized system of governance.

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It is argued here that the design of the intergovernmental governance system does not promote the constitutional objectives of decentralisation. The current system of governance does not empower local government to become more distinctive and autonomous. The problem in many cases is not what to decentralize or whether a basic service should be provided by national, provincial or local government, but rather how to align shared rule or concurrency of the particular service with the various levels of government.

One of the key questions posed in this thesis is to what extent the system of decentralized governance in South Africa enables or hinders municipalities' abilities to provide basic services in an autonomous and sustainable manner. It focuses particularly on their authority to make and implement autonomous political, administrative and financial decisions pertaining to the provision of basic services.

While this study cannot conclusively report on the impact of decentralisation on basic service delivery in South Africa, it does identify some of the systemic and structural aspects that impact on the manner or way in which local municipalities provide basic services. It raises concerns that the basic service delivery obligations of local municipalities are strenuous and financially challenging, and will continue to be as long as local municipalities rely on or are controlled by other spheres of government in meeting their constitutional mandate, especially with regard to the intergovernmental transfers of fiscal resources.

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ABBREVIATIONS

ASGISA	Accelerated and Shared Growth Initiative for South Africa
ACDP	African Christian Democratic Party
ANC	African National Congress
APC	African People's Convention
AZAPO	Azanian People's Organisation
BLA	Black Local Authorities
CBD	Central Business District
COSATU	Congress of South African Trade Unions
CP	Conservative Party
CT	Cape Town
DA	Democratic Alliance
DBN	Durban
DBSA	Development Bank of Southern Africa
DE	Department of Energy
DIG	District Intergovernmental Forums
DORA	Division of Revenue Act
DPLG	Department of Provincial and Local Government
DME	Department of Minerals and Energy
DWAF	Department of Water Affairs and Forestry
DWEA	Department of Water and Environmental Affairs
EC	Eastern Cape
ES	Equitable Share
FBS	Free Basic Services
FFC	Financial and Fiscal Commission
FIFA	Federation of International Football Association
FOSAD	Forum of South African Director-Generals
FS	Free State
GEAR	Growth Employment and Redistribution Strategy
ID	Independent Democrats
IDP	Integrated Development Plan

IFP	Inkatha Freedom Party
INEP	Integrated National Electrification Programme
IRFA	Intergovernmental Relations Framework Act
JHB	Johannesburg
JSB	Joint Services Board
KZN	KwaZulu-Natal
KWH	Kilowatt
LED	Local Economic Development
LGNF	Local Government Negotiating Forum
LGTA	Local Government Transition Act
MEC	Member of the Executive Council
MF	Minority Front
MFMA	Municipal Finance Management Act
MIG	Municipal Infrastructure Grant
MLC	Metropolitan Local Councils
MP	Member of Parliament
MPNP	Multi-Party Negotiating Process
MSA	Municipal Systems Act
MTEF	Medium Term Expenditure Framework
NA	National Assembly
NCOP	National Council of Provinces
NEMA	National Environmental Management Act
NERSA	National Energy Regulator of South Africa
NNP	New National Party
NP	National Party
NW	North West
PAC	Pan Africanist Congress
PCC	President Coordinating Committee
PLGA	Provincial Local Government Associations
PMB	Pietermaritzburg
RED	Regional Electricity Distributor
RSC	Regional Service Councils
SA	South Africa

SACN	South African Cities Network
SALGA	South African Local Government Association
SANCO	South African National Civic Association
SMME	Small Medium and Micro Enterprises
TBVC	Transkei, Bophuthatswana, Venda & Ciskei
TLC	Transitional Local Council
TMC	Transitional Metropolitan Council
TRC	Transitional Rural Council
UCDP	United Christian Democratic Party
UDM	United Democratic Movement
UNICEF	United Nations International Children's Emergency Fund
VAT	Value Added Tax
VF	Vryheid Front
VIP	Ventilated Improved Pit Latrine
WLA	White Local Authorities
WSA	Water Service Authority
WSDP	Water Services Development Plan

CHAPTER ONE

INTRODUCTION

Background

The introduction of a constitutional democracy in 1996 inaugurated a decentralised system of governance in South Africa. The system of local government is brought into the spotlight as the Constitution of South Africa (Act 108 of 1996) calls upon local government to take responsibility for addressing years of service delivery backlogs created by apartheid. The legislative obligations of local government are rigorous: it must be effective, efficient and responsive in carrying out its constitutionally mandated functions. It must organise its administration to manage, plan and finance its undertakings. Local government has to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner; to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities and community organisations in matters of local government.¹

This constitutional mandate is no easy feat for a newly established autonomous sphere of government which has been assigned a heavy legislative burden. Besides the above, local government is responsible for the provision of a wide range of services such as water supply; sewage collection and disposal; refuse removal; electricity and gas supply; municipal health services; municipal roads and storm water drainage; street lighting; and municipal parks and recreation.² The Constitution requires that local government must be an autonomous and financially self-sufficient sphere of government, which is also responsible for creating its own economic development path. This thesis will show that the constitutional obligations are posing a number of challenges to local government, especially with regard to delivering basic services such as water, sanitation and electricity.

The national government is proud to announce that access to potable water has improved from 62% of the population in 1996 to 91.8% in 2009; basic sanitation from 52% to 77%; and

¹ Section 152(1) of the Constitution of South Africa. (Act 108 of 1996).

² Schedules 4 and 5 of the Constitution of South Africa. (Act 108 of 1996).

basic electricity from 58% to 73% – mostly in what were previously referred to as township areas.³ Since 2004, despite the impressive progress towards the eradication of service delivery backlogs, South Africa has experienced numerous protests and demonstrations across a number of municipalities.⁴ Charles Nqakula (then Minister of Safety and Security), reported that there had been approximately 6000 protests during the 2004/2005 financial year alone.⁵

Residents across South Africa are demanding better quality services from their local authorities. For example, 3000 residents of Diepsloot (Gauteng province) took to the streets demanding basic services. In Durban (KwaZulu-Natal province), 5000 people from informal settlements marched through the city centre demanding houses and services. In Mitchells Plain (Western Cape province) barricades were erected and tyres were burned, excrement and rubbish were dumped onto the streets. In a protest in Harrismith (Free State province) a boy was killed during a brawl with police. A typhoid outbreak in Delmas (Mphumalanga, North West provinces) led to protesters demanding the resignation of the municipal manager. Port Elizabeth (Eastern Cape province) suffered weeks of protest by thousands of people from informal settlements. Angry residents complained about dirty water, frequent electricity outages, faulty street lights and overflowing sanitation infrastructure.⁶

Media reports, departmental reports and independent research organisations have revealed that many municipalities are finding it difficult to meet their service delivery obligations.⁷ The Department of Cooperative Governance and Traditional Affairs identified a number of

³Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Page 32.

⁴See Buhlungu, S., Daniel, J., Southall, R. and Lutchmann, J. (Eds.). (2007). State of the Nation: South Africa 2007. Pp.54-65. Pretoria: Human Sciences Research Council Publishers. And Langer, M. *Government Probes Causes of Service delivery Protests*. In Mail and Guardian. 24 July 2009. And Tau, P and Maphumulo, S. *More Service Protests on the Cards* in The Star. 24 July 2008.

⁵Buhlungu, S., Daniel, J., Southall, R. and Lutchmann, J. (Eds.). (2007). State of the Nation: South Africa 2007. Pretoria: Human Sciences Research Council Publishers. Page 58.

⁶Buhlungu, S., Daniel, J., Southall, R. and Lutchmann, J. (Eds.). (2007). State of the Nation: South Africa 2007. Pp. 54-58. Pretoria: Human Sciences Research Council Publishers.

⁷SACities Network. (2007). State of Cities Finance Report. And Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. And National Treasury (2009) Local Government Budgets and Expenditure Review 2003/04-2009/10. And Financial and Fiscal Commission. (2009). Annual Submission for the Division of Revenue. And Ndaba, D. (2009). *Minister Sexwale Maps Out A 'Beyond Housing' Vision*. In Engineering News. 24 July 2009.

persistent local political, administrative and financial problems that impact on municipalities' ability to deliver sustainable basic services.⁸ Problems such as: inadequate interaction between local councillors and local communities; eradicating the remaining service delivery backlogs; insufficient administrative and financial management; as well as mismanagement, corruption and fraud.⁹

Many municipalities are experiencing serious financial stress brought on by problems such as the non-payment of services leading to municipal debt. The National Treasury stated that municipalities lack proper credit control and debt collection methods, resulting in municipal debt increasing rapidly. By the end of 2007, the national municipal debt was around R32 billion, a figure which is estimated to be growing at R3.2 billion a year.¹⁰ The Auditor-General noted that municipalities were inept at financial management, and stated that only 197 (of a total of 283) municipalities submitted financial statements in 2009, of which only 19% received clean audit reports.¹¹

Rationale for the Study

Local government service delivery problems have become evident since 2000. My own previous research findings highlighted eminent problems of sustainable service delivery. For example, in 2005, I undertook extensive fieldwork in Pietermaritzburg (KwaZulu-Natal) which is located in the Msunduzi Municipality (classified as a Category B municipality).¹² A survey of 500 households was carried out in five geographical areas, each representing different socio-economic demographics.¹³ The initial interest was to investigate the 'culture of non-payment', a catchphrase which was popular during the liberation struggle when the

⁸ Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Page 4.

⁹ Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Page 4.

¹⁰ These are the most up-to-date official figures presented by the National Treasury in the Local Government Budgets and Expenditure Review 2003/04-2009/10.

¹¹ Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Page 166.

¹² Stanton, A. (2006). Survey on Access to Basic Services in the Msunduzi Municipality. Unpublished Report.

¹³ Sobantu (low-income African township area bordering the Central Business District); Imbali (low income African township area further away from the Central Business District); Oriibi (low-income multi-racial area, bordering industrial areas); Northdale (middle-income Indian area bordering industrial areas); Oak Park (upmarket White residential area).

African National Congress (ANC) made a nationwide call to protest against inferior service delivery by the apartheid government, making the country ungovernable by withholding payments for services and rates boycotts.¹⁴

The intentional withholding of service fees became known as a culture of non-payment. After the first democratic elections in South Africa in 1994, the ruling ANC-led government launched a countrywide programme named 'Operation Masakhane'. It urged residents to pay for services such as water, sanitation, electricity and refuse removal. The objective was to restore a culture of payment for services by the majority of citizens.¹⁵

The main objective of my fieldwork was to ascertain to what extent such a culture of non-payment continued to exist in the Msunduzi municipality. The findings of the surveys contradicted the popular notion that citizens were continuing their resistance to pay service delivery fees. Based on the findings, the claim that a culture of non-payment prevails was refuted. The surveys showed that each area received most local government services, yet non-payment was prevalent. For example, in the poorer areas of Sobantu, Edendale, Imbali and parts of Northdale, each resident interviewed had access to clean water within 50 meters of their residence, and most had in-house water. Most households had access to sanitation, varying from pit-latrines to waterborne sewage. Road infrastructure existed, and refuse was collected, even if irregularly. Most households had access to electricity, and resided in RDP houses.¹⁶ Yet, at that time, the municipality had outstanding service arrears to the value of R78 million.¹⁷

In an attempt to uncover the attitudes of those who are able to afford service charges, 100 residents were surveyed in 2006 in Oak Park which is regarded as an upmarket area.¹⁸ In this area, the average house price in 2006 was at least ten times higher than those in Sobantu,

¹⁴ Nattrass, N. and Ardington, E. (1990). The Political Economy of South Africa. Cape Town: Oxford University Press.

¹⁵ Nattrass, N. and Ardington, E. (1990). The Political Economy of South Africa. Cape Town: Oxford University Press.

¹⁶ Stanton, A. (2006). Survey on Access to Basic Services in the Msunduzi Municipality. Unpublished Report.

¹⁷ Interview with Municipal Finance Officer. (Msunduzi Municipality). Pietermaritzburg, 23 June 2006.

¹⁸ Stanton, A. (2006). Survey on Access to Basic Services in the Msunduzi Municipality. Unpublished Report.

Edendale and Imbali and five times higher than in Northdale. Residents in Oak Park feared rising property rates and user fees, thinking that their rates would pay for service delivery across the municipalities. In the surveys in 2006, Oak Park residents complained of rapidly deteriorating infrastructure. Residents complained about potholes, irregular refuse collection, unkempt grass verges and broken street lights. Some respondents suggested that paying households should withhold service payments until service delivery improved and all residents were forced to pay for service delivery.

The survey findings showed that despite the high levels of poverty in Sobantu, Edendale, Imbali and to a lesser extent in Northdale, the majority of people accepted the responsibility to pay for service delivery. It became clear that people did not pay because of a real inability to pay as opposed to an intentional withholding of payment. Many households were headed by pensioners, often fostering children whose parents had died of Tuberculosis (TB) or HIV/AIDS. These pensioners still tried to pay for services. Others were only in temporary employment. Transport costs and food prices constituted the greatest part of their monthly expenses. The majority had no medical aid, pension fund, savings or any other long-term investment fund, while the tendency was to invest in funeral policies.¹⁹

It became evident that although people's physical living conditions were relatively better off than under apartheid, few could afford their new standard of living. Respondents from the low-income areas were aware of illegal electricity and water connections, but understood why residents would opt to do so, and none would report offenders to the authorities. Theft in low income areas was high, especially those of taps, pots, door handles and water pipes which were supposedly sold for scrap metal. Electricity cables and telephone wires were constantly stolen and sold for cash.

My immediate question was that of sustainability. How would the municipality maintain and fund future service delivery if payment was not forthcoming? My conclusion was that local government would face significant service delivery problems if non-payment continued. Under such circumstances, basic service delivery was financially unaffordable for the municipality. The consequence would be unsustainable service delivery. The municipality would have to extract more resources from the wealthier residents, businesses and industries.

¹⁹ Stanton, A. (2006). Survey on Access to Basic Services in the Msunduzi Municipality. Unpublished Report.

Or national government would have to subsidise service delivery substantially. My guess was that the Msunduzi municipality was not the only municipality facing non-payment of this nature.

Scope of the Study

This study revisits some of the questions raised as a result of these surveys, but goes beyond the non-payment of basic services. One can argue that local government is or might be an unviable sphere of government. This study proposes, however, that the problems are those of basic service delivery not of local government *per se* and, as such, are broader governance problems.

Local government has been assigned an extensive spectrum of responsibilities, too many to explore here. The scope of this study is confined to the basic service delivery mandate. The thesis will show that the basic service delivery mandate is onerous and complicated by a number of factors, many of which are beyond the control of local government. It will be argued here that many service delivery problems emanate from the legislative, structural and procedural systems informing local government.

This thesis will not explore the relevance of decentralisation for provinces or quasi-autonomous units such as state-owned enterprises. It will only consider decentralisation with regard to local government.

The thesis reflects on local government transformation between 1993-2009. 1993 was for all intents and purposes the official beginning of the local government transformation process. It heralded, for example, the multi-party Local Government Negotiation Forum (LGNF) as well as the Local Government Transition Act (Act of 1993) between the then apartheid regime and the anti-apartheid liberation movements such as the African National Congress (ANC). The outcome of these negotiations provided the framework for the post-apartheid local government reform processes culminating in local government becoming established as a constitutionally protected sphere of government in a system of decentralised governance.

South Africa has 283 municipalities. These are differentiated into three groups: Category A (metropolitan municipalities); Category B (local municipalities); and Category C

municipalities). Category A (or metropolitan municipalities) have exclusive executive and legislative authority and are governed by single councils. Category B municipalities, however, share executive and legislative authority with Category C municipalities within whose jurisdictions they lie.²⁰ The focus of this thesis is on the challenges facing local government regarding the delivery of basic services. But it also considers more particularly the basic service delivery issues experienced in local (Category B) municipalities as opposed to rural or metropolitan municipalities - even though all categories of municipalities may experience similar service delivery problems.

The reason for focusing particularly on Category B municipalities is a strong belief that the service delivery problems facing these municipalities are underestimated. The tendency is to focus research on Category C municipalities which are regarded as facing the most severe basic service delivery problems because they are predominantly located in underdeveloped and poor rural areas. However, this study will show that Category B municipalities face extensive and complicated basic service delivery problems, most of which emanate from their two-tiered configuration with Category C municipalities.

There are a number of fundamental factors that impact on local government service delivery - too many to include in this study. This thesis does not examine in much detail local government's political responsibilities such as fostering local democracy or community participation. Neither does it set out to investigate local government's responsibility for local economic development. These aspects are regarded as beyond the scope of this study and warrant critical investigation in their own right. The thesis does, however, acknowledge and consider some of these issues if and when they are relevant to discussions on municipalities' autonomy regarding the provision of sustainable basic services.

Serious consideration was given to whether to analyse local government's responsibility for local economic development (LED). The rationale for excluding this theme (notwithstanding that it constitutes a thesis in its own right) is that this study focuses more on intergovernmental relations between the three spheres of government and the impact thereof on local government autonomy, as opposed to local government's relationship with private

²⁰The Municipal Systems Act. (Act 32 of 2000).

partners or community groups. But despite the exclusion, it remains crucial to recognise the significance of LED and the impact it has on local government service delivery.

While this study does not dwell on the merits of public participation, local public planning forums, or ward committee participation, it does acknowledge the contribution that such processes can make to shaping service delivery priorities. The objective of the study is not to assess these institutions, or measure to what extent they are useful. It does argue, however, that they have the potential to be more effective.

Conceptual Framework

Local government service delivery problems are viewed by the central government as administrative and financial problems. One of the arguments made in this thesis is that while the viability of local government is indeed questionable, the challenges that face municipalities are not simply one of local administrative and financial incompetence. On the contrary, this thesis will show that many of the problems are systemic and procedural. It will show that many of the basic service delivery problems emanate from the decentralised system of governance that has evolved since the establishment of a new democratic dispensation in 1994 with the first national democratic election. In order to investigate this, a conceptual framework of decentralisation will be used for explanatory purposes.

According to the literature, decentralisation implies the transfer of power over decision-making to sub-national units of government.²¹ Such transfers take on different forms and can be put into effect in many ways. Authors often distinguish between three key dimensions: political, administrative and financial decentralisation; as well as three different forms: devolution, delegation and deconcentration.

Based on the literature on decentralisation, the different dimensions of decentralisation are implemented as mechanisms for shifting power and authority away from the centre to sub-national units of government. Politically, this means that local government is made accountable first and foremost to its constituents as opposed to national government. Administratively, specific service delivery functions are assigned to lower levels of

²¹ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

government while, financially, local governments have adequate access to local revenue enabling them to act autonomously.

This thesis investigates the nature of decentralisation in South Africa from these three vantage points and considers the different forms each dimension takes in order to consider the extent of local government autonomy. Local autonomy is, according to the literature, at its most pronounced when local governments have been devolved the authority and capacity to make and implement political, administrative and financial decisions without intervention from central government.²² This thesis investigates to what extent municipalities in South Africa have such independent authority and capacity – focusing particularly on their autonomy to make and implement autonomous political, administrative and financial decisions pertaining to the provision of basic services.

The purpose of the conceptual framework is not to assess whether South Africa is centralised or decentralised. Neither does it aim to assess whether or not local government authority in South Africa is devolved, delegated or deconcentrated. The conceptual framework will be utilised to determine to what extent the system of decentralised governance in South Africa affects the autonomy of local government to provide basic services. The objective of the conceptual framework is also not to assess whether decentralisation is ‘good’ or ‘bad’ for service delivery in South Africa. It serves as a point of reference to investigate to what extent the different forms of decentralisation are apparent in political, administrative and financial intergovernmental relations and how this impacts on municipalities’ ability to deliver basic services sustainably and autonomously.

Aims of the Study

One of the key questions posed in this thesis is to what extent the system of decentralised governance in South Africa enables or hinders municipalities’ to provide basic services in an autonomous and sustainable manner.

²²Cohen, J.M. and Peterson, S.B. (1999). *Administrative Decentralization: Strategies for Developing Countries*. Sterling: Kumarian Press. And Grindle, M. (2007). *Going Local*. Princeton: Princeton University Press. And Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In *Governance: An International Journal of Policy and Administration*. Volume 14 (1). Pp. 23-53.

The establishment of three spheres of government, as well as the three different categories of municipalities and its two-tiered configuration, has resulted in an intricate and complex system of service delivery. Understanding this is crucial to this study.

An overarching concern in this research is whether the failings of local government pose a threat to decentralisation. This study considers whether the basic service delivery challenges facing local government are a threat to the system of decentralised governance in South Africa. In other words, if municipalities are unable to meet their constitutional mandate for basic service delivery, does this mean that local government should no longer be an independent and autonomous sphere of government?

Or are the failings of local government a result of the system of decentralisation in South Africa? In this respect the aim is to investigate if and how the decentralised system of governance affects the extent to which municipalities can independently meet their constitutional basic service delivery mandate.

Closely linked to these questions is determining to what extent local government is a fully fledged part of South Africa's decentralised system of democratic governance. Does the current configuration of the system of decentralisation and intergovernmental relations in South Africa assist municipalities' to provide basic services autonomously and in a sustainable manner? Or does it hinder local government's autonomy to deliver basic services?

This thesis will show that overcoming the apartheid legacy of service delivery backlogs depends on a degree of central oversight. However, the question is whether this central oversight is at the cost of local autonomy. Is central oversight at the expense of a municipality's right to "govern, on its own initiative, the affairs of the local community"?²³

Approach

²³ Section 151(3) of the Constitution of South Africa. (Act 108 of 1996).

This study is primarily a qualitative one which relied on a wide range of sources in order to identify and analyse the factors that affect local autonomy. The conceptual framework is derived from the general literature on decentralisation as well as from a review of previous country-specific studies.²⁴

Extensive literature exists on decentralisation, primarily driven by a worldwide trend in governance towards decentralisation as witnessed over the last few decades. A number of studies have been done tracing the initiation of decentralised practices in developing countries such as Latin America, Asia, and in Africa in general - where democracy has replaced previous autocratic or military rule.²⁵ In Mozambique and Uganda, for example, decentralisation is regarded as being able to unite citizens after years of civil wars.²⁶ More recently, studies are focusing on China as socialism is being replaced by democracy. These studies claim that decentralisation is motivated by the need to localise service delivery to large populations which were previously out of the reach of central administration.²⁷

Most authors draw strong correlations between decentralisation and democracy.²⁸ Diamond, especially, posits that if there is no decentralisation, then democracy is unlikely to endure.²⁹

²⁴ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. Heller, P. (2001). *Moving the State: The Politics of Democratic Decentralization in Kerala, South Africa and Porto Alegre*. In Politics & Society. Volume 23. Pp. 131-163.

²⁵ Such as Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: John Hopkins University Press. And Linz, J. and Lipset, S. (Eds.). (1995). Politics in Developing Countries: Comparing Experiences with Democracy. Colorado: Lynne Rienner Publishers. And Huntington, S. (1991). The Third Wave: Democratization in the Twentieth Century. Oklahoma: University of Oklahoma Press. And Linz, J. and Stepan, A. (1996). Problems of Democratic Transition and Consolidation. Baltimore: John Hopkins University Press.

²⁶ Such as Bardhan, P. (2000). *Decentralization of Governance and Development*. In The Journal of Economic Perspectives. Volume 16(4). Pp. 185-205. And Onyach-Olaa, M. (2003). *The Challenges of Implementing Decentralization: Recent Experiences in Uganda*. In Public Administration and Development. Volume 3. Pp.105-113.

²⁷ Such as Bardhan, M. (2006). *Decentralization and Accountability in Infrastructure Delivery in Developing Countries*. In The Economic Journal. Volume 116 (508). Pp. 101-127. And Faguet, J. (2004). *Does Decentralization Increase Government Responsiveness to Local Needs?* In Journal of Public Economics. Volume 88. Pp.867– 893.

²⁸ Such as Diamond, L. Developing Democracy: Towards Consolidation (1999). Baltimore: Johns Hopkins University Press. And Linz, J. and Lipset, S. (Eds.). (1995). Politics in Developing Countries: Comparing Experiences with Democracy. Colorado: Lynne Rienner Publishers. And Huntington, S. (1991). The Third Wave: Democratization in the Twentieth Century. Oklahoma: University of Oklahoma Press. And Nye, J. and Donahue, J. (2000)

Specific country studies on the implementation of decentralisation are predominantly instigated by the World Bank and United Nations Development Programme (UNDP).³⁰ These institutions are adamant that decentralisation increases democracy and by implication enhances service delivery. Funding allocations to developing countries are often conditional on their governments undertaking decentralisation.

One interesting exception is Grindle's study on decentralisation in Mexico. In her book Going Local, Grindle considers how, why, and when better local governance emerges, or does not.³¹ A question which she feels cannot be answered. One can, however, identify factors that contribute to or hinder better local governance. She is careful to use the word *better* – insinuating that there is no model for *good* local governance. She is interested in exploring why some local authorities succeed where others do not:

*The rhetoric and theory of decentralization promise better governance and deeper democracy as public officials are held more directly accountable for their actions and as citizens become more engaged in local affairs... however...it can also result in unfulfilled expectations and the emergence of unanticipated problems.*³²

Studies on decentralisation in a post-apartheid South Africa are limited. The majority of the literature deals with local government in general, and is not based on a theoretical framework of decentralisation. Some offer general descriptions of local government, its transformation and how it fits into the basic structures of governance, but offer minimal analytical content.³³ No specific study examines the implementation of decentralisation in a post-apartheid South

Governance in a Globalising World. Washington: Brookings Institution. And Linz, J. and Stepan, A. (1996). Problems of Democratic Transition and Consolidation. Baltimore: John Hopkins University Press.

²⁹ Diamond, L. Developing Democracy: Towards Consolidation (1999). Baltimore: Johns Hopkins University Press.

³⁰ Such as Burki, S. Guillermo, P and Dillinger, W. (1999). Beyond the Centre: Decentralizing the State. Washington: World Bank. And Litvack, J., Ahmad, J. and Bird, R. (1998). Rethinking Decentralization At The World Bank. Washington: World Bank. Shah, A. and Thompson, T. (2004) Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures. World Bank Policy Research Working Paper (3353). Washington: World Bank.

³¹ Grindle, M. 2007. Going Local. Princeton: Princeton University Press.

³² Grindle, M. 2007. Going Local. Princeton: Princeton University Press.

³³ Reddy, P. (Ed.). (1999). Local Government Democratisation and Decentralization: A Review of the Southern African Region. Cape Town: Juta. And Reddy, P., Singh, D. and Moodley, S. (2003). Local Government Financing and Development in Southern Africa. Oxford: Oxford University Press.

Africa with regard to its structural and procedural impact on local government. Nor do any studies consider how the system of decentralisation impacts on local government's ability to provide basic services. This makes this study unique.

The information gathered relied extensively on journal articles, and working papers produced by independent research institutions, such as the Human Sciences Research Council (HSRC), the Centre for Development and Environment (CDE), and the South African Cities Network (SACities Network). The majority of the data for this study was extracted from primary sources such as government legislation, policy documents, departmental reports, and submissions made by independent Commissions such as the Financial and Fiscal Commission (FFC). The challenge became how to organise such piecemeal information in a holistic manner. In addition to reviewing the respective reports, a number of interviews were held with municipal councillors and officials, many from the Msunduzi Municipality (Pietermaritzburg, KwaZulu-Natal province). Of interest (or concern) was the across-the-board appeal for confidentiality, as respondents were worried about the political consequences of their statements.

Many municipal council meetings and provincial portfolio committee meetings were attended throughout the study. Workshops and local government conferences provided me with informal opportunities to interact with government officials from national, provincial and local government. These meetings also enabled me to have *impromptu* interviews and it also gave me access to unpublished government reports. During the course of my research, Dr Sutcliffe provided valuable input into discussions on local government – initially as the Chairperson of the Municipal Demarcation Board, and later in his capacity as municipal manager of the eThekweni metropolitan municipality (Durban, KwaZulu-Natal province).

In undertaking this study, a number of research problems emerged. It became evident that reliable, coherent and up-to-date data was lacking. This posed significant limitations on the type of conclusions that could justifiably be made. It made verifying and consolidating data for the purposes of this particular study problematic. Throughout the study the utmost effort was made to source the latest datasets and government publications. However, many official government reports did not go beyond 2007. Even those reports that were published after 2007 often used figures based on the data of the 2007 publications. Some government reports used Census 2001 data, others relied on the 2007 Community Survey results. The latest

report emanating from the Department of Cooperative Governance and Traditional Affairs, namely The State of Local Government in South Africa which was published in late 2009, refers to Census 2001 data, the 2007 Community Survey, as well as to different government departments' own datasets. The result is an assortment of 'stats' based on a variety of sources.

The budgetary data used in the thesis are based on the annual Division of Revenue Acts (DORAs). It is acknowledged here that only the 2005/06 budget can be regarded as the latest actual budget and that the figures from 2005-2010 are only estimates, and may therefore vary from those in subsequent audited financial statements. However, the actual figures are not of significance here. Rather, the extent to which the respective budget allocation has increased, decreased or remained the same is indicative of the national government's vision of funding allocation.

The research methodology applied in this thesis proved to be complex but at the same time also unique because the data available has not been analysed from a political, administrative and financial perspective, nor has it been used to investigate the impact it may have on local government's autonomy in their provision of basic services.

Structure of the Thesis

The thesis will commence by a conceptualisation of decentralisation, immediately following this introduction. This second chapter will develop a conceptual framework for exploring local government within a decentralised system of governance. It will reflect on the literature on decentralisation and will identify some of its fundamental characteristics in order to create an analytical framework for the study. The chapter will focus particularly on three different dimensions of decentralisation, namely, political decentralisation, administrative decentralisation and financial decentralisation. In addition to the three different dimensions of decentralisation, the literature also identifies three different forms of decentralisation: namely, devolution, delegation and deconcentration. This second chapter will consider these three forms and the potential permutations thereof pertaining to the respective dimensions of decentralisation. For these purposes, the chapter will present a matrix in order to illustrate the interrelatedness between the different dimensions of decentralisation and the different forms of decentralisation.

The organisation of the remainder of the thesis is primarily based on the three dimensions of decentralisation as conceptualised in Chapter Two. Chapter Three will examine the history of political decentralisation in South Africa. It will analyse the transition from the minority-led centralist apartheid regime to the introduction of a democratic system of governance. It will illustrate the events that culminated in the creation of local government as an autonomous and democratically elected sphere of government. Chapter Three undertakes an analysis of the local government transformation process focusing particularly on the ongoing development of the legislative and policy framework. This chapter will also investigate the introduction of local government reforms and the subsequent policy framework setting up local government as an autonomous sphere of government. It will reflect on the process of demarcating new municipal boundaries and will analyse their significance for local government's current ability to deliver basic services.

The fourth chapter will focus on administrative decentralisation in South Africa. It is concerned with the manner in which national government transfers administrative responsibilities to local government. It will focus particularly on the allocation of authority for basic services. This chapter will show that the transfer of power and authority between the two-tiered system of local government impacts directly on the autonomy of local municipalities.

Chapter Five provides a more specific investigation into the implementation challenges of administrative decentralisation. It does so by focusing on cost recovery, which is a relatively new administrative local government function. The argument is often made by the National Treasury that if municipalities were better at recovering costs associated with the delivery of basic services, then municipalities would be autonomous entities. This chapter will critically assess this assumption and investigate why cost recovery appears to be an administrative problem for municipalities. It will illustrate that cost recovery poses significant administrative challenges for local government, especially for Category B municipalities.

Chapter Six will consider the system of financial decentralisation in South Africa. It will examine the nature of intergovernmental fiscal relations and the process of transferring funds to local government. It will analyse the structural and procedural system in place for the

division of national revenue across the three spheres of government and consider the implications for local fiscal autonomy.

Chapter Seven is concerned with more specific fiscal challenges associated with financial decentralisation. This chapter will examine more critically the popular notion that municipalities are currently in precarious financial situation. It aims to identify some of the underlying factors that explain or underlie this financially unviable situation. It will illustrate that this financial weakness contributes to the weakening of local fiscal autonomy and, in turn, threatens local autonomy in general.

The eighth and final chapter concludes the argument and draws together the various themes explored in each of the previous chapters based on the conceptual framework established at the beginning of the thesis. It will provide a holistic understanding of decentralisation, local autonomy and basic service delivery in South Africa. The conclusion will reflect on all three of the dimensions and forms of decentralisation as they have unfolded in the South African context and will reach conclusions on how the configuration of decentralisation in South Africa has influenced local municipalities' autonomy to provide sustainable basic services. It will present a critical analysis of how decentralisation has been put into effect in South Africa by considering, for example, the relationship between decentralisation in legal terms compared to how it is implemented. The findings of the thesis highlight extensive possibilities for further research, some of which will be briefly considered.

CHAPTER TWO

CONCEPTUALISING DECENTRALISATION

Introduction

The focus of this study is on the strategic policy choices that the South African government has made about the design as well as the sequencing of political, administrative and fiscal decentralisation. The progression of political, administrative and fiscal intergovernmental institutional arrangements over the last fifteen years is a reflection of central government's interpretation of local government as a democratic sphere of government as established by the South African Constitution. Since then policies have been drafted and enacted and have tasked local governments with a set of new responsibilities. In political terms, politicians were often appointed by the central government, but politicians are now elected locally and decision-making is theoretically democratic and inclusive. Administratively, local government service delivery obligations extend beyond refuse removal and local traffic control to widespread services such as water supply and local economic development. Fiscally, local governments are responsible for managing their own budgets, generating their own revenue and generating full financial accounts. These respective responsibilities are new to local government and as the thesis will explore, challenging.

The literature on decentralisation is extensive. Decentralisation takes on different forms in different political regimes. Typically, a unitary state is characterised by a single or multi-tiered government in which effective control of government functions rests with the central government. A federal state is a multilayered structure with autonomous decision-making distributed among levels of government. In a confederal system of government, the central government serves as the agent of member units, usually without independent taxing and spending powers.³⁴ The commonality is the transfer of central government authority to sub-national units to provide public services.³⁵ This transfer can be within formal political structures, within administrative or parastatal structures, or from the state sector to the private sector, or a combination of all.

³⁴ Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan.

³⁵ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

This chapter focuses on the arguments that claim that decentralisation is integral to better governance and service delivery. It does so by firstly exploring some of the reasons behind the popularisation of decentralisation. More specific attention will be paid to the different dimensions of decentralisation, while the different forms will also be considered. Some studies on decentralisation seek to design models in a search to assess to what extent a country is centralised or decentralised. These will be explored even though the objective of this study is not to formally assess decentralisation in South Africa. The rationale for its inclusion here is that these popular measures offer insight into why certain characteristics are deemed to increase or limit local autonomy. The chapter ends by examining the theoretical distinction between centralised and decentralised governance.

2.1 The Rise of Decentralisation

The literature on decentralisation claims that over the past decade decentralisation has become a global governance phenomenon, not always for the same reasons or in the same manner, but all part of the broader political and economic reform processes experienced world-wide. Factors leading to its prominence are diverse such as pressures exerted by international financial institutions; the advent of democracy and multi-party political systems; the need to improve delivery of local services to large populations; the challenge of ethnic and geographic diversity; and the growing dissatisfaction with central governments' failure to provide effective public services have all contributed to the popularisation of decentralisation.³⁶

Proponents of decentralisation emphasized the multifaceted contribution local government could make to improve democratic governance as well as public service delivery. According to Cohen *et al*:

Decentralization supported by increasing local participation is seen as one aspect of a strategy for ending the inefficient and ineffective heritage of statist-based command economies while downsizing bloated, costly and ineffective public sectors. It is also

³⁶ See for example Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. And Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: Johns Hopkins University Press. And Grindle, M. (2007). Going Local. Princeton: Princeton University Press. And Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149. And Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan.

*seen as key to the emergence of responsive local government leaders and more effective service to local clients.*³⁷

As such, advocates of decentralisation argue that decentralising government simultaneously improves the efficacy, quality and legitimacy of democracy.

Grindle claims that the quality of governance, particularly local governance, became a popular consideration in discussions on improving public service delivery.³⁸ Local democratic governance became more and more regarded as integral to good governance. The most commonly cited reasons advocating decentralisation are that, compared to a centralised system of governance, decentralisation contributes to good governance in three key interrelated ways. Firstly, it improves public sector responsiveness. Secondly, it improves public sector accountability; and thirdly it makes service delivery more efficient and effective. Each will be discussed briefly.

Firstly, in contrast to highly centralised states which Diamond regards as inept at addressing local needs, decentralisation creates democratic local governance by moving decision-making for local public services closer to the people.³⁹ In centralist states, decision-making takes place in isolation of peoples' immediate geographical and socio-economic environment. As a result, public servants are more responsive to their immediate superiors than to the public at large.⁴⁰ Contrary to a centralised government, local democratic government is more responsive because it offers a place for public participation. As such, citizens can voice their service delivery needs and can call for better local government performance.⁴¹

The theory on decentralisation promises better governance and service delivery since this form of governance offers an opportunity for citizens to engage with public officials, whereas in a centralised system of governance, public bureaucrats are too far removed from the people

³⁷ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. Page 6.

³⁸ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

³⁹ Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: Johns Hopkins University Press.

⁴⁰ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

⁴¹ Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: Johns Hopkins University Press.

they are meant to serve.⁴² The argument in favour of decentralised service delivery is that when local people participate in the decision-making process, services will then fulfil locally identified needs, avoiding ill-conceived service delivery projects.⁴³

Secondly, some claim that decentralisation improves public sector accountability. For example, Cohen *et al* argue that public participation was more than a general feature of good governance, it also “was pushed as much for its potential to make the public sector more accountable as for its relationship to democratisation.”⁴⁴ Centralised governments were increasingly being criticized for having limited levels of accountability. Decentralisation was seen as a means “to redress decades of statist development strategies that had resulted in... high levels of corruption in the production of public services.”⁴⁵ Those who strongly advocate decentralisation stress the significance of accountability.⁴⁶ They argue that decentralisation improves government accountability since it brings government closer to local people. Grindle, for example, argues that when people can elect their local government officials they can be held more directly accountable for their actions or inactions.⁴⁷

Thirdly, decentralisation leads to efficient and effective service delivery. By the early 1980’s, concerns were increasingly being raised about the lack of administrative and fiscal capacity in the public sector.⁴⁸ More and more calls were being made to introduce decentralisation in order to improve government effectiveness in the delivery of public services.⁴⁹ The emphasis on more efficient and effective service delivery was partially informed by a global move towards new public management. The paradigm of new public

⁴² Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

⁴³ Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

⁴⁴ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Page 5.

⁴⁵ Grindle, M. (2007). Going Local. Princeton: Princeton University Press. Page 7.

⁴⁶ Burki, S. Guillermo, P and Dillinger, W. (1999). Beyond the Centre: Decentralizing the State. Washington: World Bank. And Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: Johns Hopkins University Press. And Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan. And World Bank. (2000). Decentralization: Rethinking Government. World Development Report, 1999-2000. Washington: World Bank.

⁴⁷ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

⁴⁸ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

⁴⁹ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

management theorised that implementing service delivery approaches traditionally associated with markets would lead to greater cost-efficiency in the public sector.⁵⁰ “Shifting greater responsibility to local authorities is seen ... as a way to break the ‘grip’ of central planning and mismanagement.”⁵¹

The argument was that decentralising the delivery of public services removed public service monopolies, introduced competition, as well as improved the allocation of resources.⁵² Cohen *et al* describe how concerns in the early 1990s about the lack of central government capacity and fiscal constraints provided further grounds for implementing decentralisation reforms to “facilitate such objectives as improved government effectiveness in the delivery of goods and service [and] the promotion of revenue collection.”⁵³

Decentralisation empowers regional and local governments and grants them some autonomy in service-delivery. Such local authorities, the argument goes, are more efficient and effective than central government because if local governments are responsible for budgeting, public service delivery and the recovery of associated costs, they will be more prudent than central government.⁵⁴

Although local governments always had some role in the management of local affairs, it was only towards the end of the twentieth century that they were given more responsibilities, more resources and more autonomy for public service delivery. Responsibilities that were political, administrative and financial. Political responsibilities in democratic regimes entailed having regular, competitive local government elections. Theories on decentralisation also called for widespread public participation in local decision-making as well as increasing

⁵⁰ Fosu, A. and Ryan, T. (2004). *Public Sector Delivery: A Synthesis*. In Journal of African Economies. Volume 13 (1). Pp 137-141.

⁵¹ Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

⁵² Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

⁵³ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. Page 5.

⁵⁴ Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

local accountability.⁵⁵ In administrative terms, municipalities became more and more responsible for planning, managing and overseeing service delivery within their jurisdictions. This responsibility was closely accompanied by increased financial autonomy and accountability.⁵⁶

2.1 Dimensions of Decentralisation

So far, the chapter has argued that decentralisation is generally about the transfer of authority from central government to lower levels of government (or quasi/private institutions for that matter) and that the rationale for decentralisation is often to democratise service delivery by bringing government closer to the people, as well as a belief that local governance is more effective and efficient than centralised governance. As such, decentralisation entails the transfer of central authority for specific functions and responsibilities down to sub-national units of government. These different powers and functions are further separated into different dimensions of decentralisation.

Authors group these respective functions and responsibilities into different dimensions. Shah *et al* as well as Grindle identify three dimensions, namely: (1) political, (2) administrative, and (3) fiscal decentralisation.⁵⁷ From their perspective, decentralisation is generally summarised as the assignment of specific political, administrative and fiscal responsibilities to lower levels of government, and in some instances to the private sector. Cohen *et al* identify four dimensions: (1) political; (2) spatial; (3) market; and (4) administrative decentralisation.⁵⁸ They do not single out fiscal decentralisation but indirectly address it in their analysis of market decentralisation. Their studies focus primarily on administrative decentralisation and the extent to which administrative functions are deconcentrated, delegated and devolved among the levels of government.

⁵⁵Burki, S. Guillermo, P and Dillinger, W. (1999). Beyond the Centre: Decentralizing the State. Washington: World Bank. And Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: Johns Hopkins University Press.

⁵⁶ Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

⁵⁷ Grindle, M. (2007). Going Local. Princeton: Princeton University Press. And Shah, A. and Thompson, T. (2004) *Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. World Bank Policy Research Working Paper 3353. Washington: World Bank.

⁵⁸ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press.

2.2.1 Political Decentralisation

Political decentralisation often commences with instituting democratic local government elections and distributing public policy-making power and the authority to make independent decisions both vertically (between levels of government and citizens) and horizontally (within a level of government). Political decentralisation is sometimes referred to as democratic decentralisation in that it provides for local governments to be elected – to be answerable to their local constituencies, with the authority to pass by-laws in their sphere of jurisdiction.⁵⁹

The literature tends to assume an intrinsic relationship between political decentralisation and service delivery. Some posit that political decentralisation is only worthwhile when it is supported by increasing local participation so that it can foster the emergence of responsive local government, in turn resulting in effective service delivery to local people.⁶⁰ Political decentralisation, it is often argued, expands the scope of citizen participation in public decision-making which improves service delivery because it facilitates a better alignment of local preferences. It entails the transfer of decision-making power to citizens to elect their local representatives. In so doing, it increases the ability of citizens to select public officials who they think will be more responsive and accountable.⁶¹ The assumption made is that when citizens are able to participate in local decision-making, they will be able to insist on better public service delivery.

According to Heller, many scholars regard political decentralisation as a necessary condition to establish decentralisation more widely.⁶² As such, it should precede administrative as well as fiscal decentralisation, thereby granting local representatives input in formalising the shape of subsequent administrative and fiscal decentralisation processes. He insinuates that without political decentralisation there can be no administrative or fiscal decentralisation.

⁵⁹ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

⁶⁰ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development. And Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: Johns Hopkins University Press.

⁶¹ Heller, P. (2001). *Moving the State: The Politics of Democratic Decentralization in Kerala, South Africa and Porto Alegre*. In Politics & Society. Volume 23. Pp. 131-163.

⁶² Heller, P. (2001). *Moving the State: The Politics of Democratic Decentralization in Kerala, South Africa and Porto Alegre*. In Politics & Society. Volume 23. Pp. 131-163.

2.2.2 Administrative Decentralisation

Administrative decentralisation is concerned with the functional tasks of decentralisation. It relates to the assignment of service delivery powers and functions across levels of government and determining where responsibility is situated. Cohen *et al* state that “administrative decentralisation is focused on the hierarchical and functional distribution of powers and functions between central and non-central units.”⁶³

Administrative decentralisation is concerned with the extent of central authority transferred to local governments and centres on key management functions of local government. For example, it can assign to local governments the authority to hire and fire local staff without the prior approval of central government. In some instances, administrative decentralisation devolves authority to local governments to determine the quantity, quality and distribution of public services. In such cases, the challenge for central government is that while it wants to maintain national standards it has devolved administrative powers to local governments in order for them to design their own programmes for providing basic services.

Devolving service delivery functions to local government can become contentious when shared across spheres of government, where each sphere has a degree of autonomy. This is especially so in a unitary state where the central state wishes to retain a degree of control and sustain a system of hierarchy.⁶⁴

2.2.3 Fiscal Decentralisation

Fiscal decentralisation concerns the allocation of financial powers and functions to lower levels of government. The system of control and dispersal of financial revenue is a core component of fiscal decentralisation - whether such revenue is raised locally or is transferred from the central government. Fiscal decentralisation is concerned with the distribution of fiscal responsibilities and the consequent interactions between the national and local governments. It includes the design of intergovernmental fiscal transfers that shift general revenues from taxes collected by the central government to local governments and the extent to which municipalities may borrow from private financial institutions. It also relates to

⁶³ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. Page 22.

⁶⁴ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press.

financing local governments and the extent to which local service delivery will be subsidised.⁶⁵

Devolving financial authority to lower levels of government reduces central government's control over public expenditure. It involves the transfer of power to local authorities to make autonomous decisions about revenue collection strategies and expenditures decisions. With such autonomy comes local responsibility such as that of cost recovery through user charges and property taxes.

Fiscal decentralisation may confer power on locally-elected officials to collect and spend own revenue. In the most fulsome application of fiscal decentralisation, local government is awarded substantial taxing powers and the freedom to determine the extent of public service delivery. The argument in favour of such extensive fiscal autonomy is that local government services would become more efficient if they were paid for by local taxes and fees. However, in practice, such autonomy is rare, especially in developing or transition countries, because central governments tend to determine or control tax rates in the interests of macro-economic stability.⁶⁶

2.2.4 Market Decentralisation

Cohen *et al* identify market decentralisation as another dimension of decentralisation. According to them, market decentralisation refers to reassigning service delivery authority from central government to other institutions.⁶⁷ Calls for market decentralisation often emanate from international finance institutions such as the World Bank or the International Monetary Fund, calling for downsizing government, denationalising state assets and making more use of market-based approaches to service delivery.⁶⁸

⁶⁵ Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

⁶⁶ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

⁶⁷ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development.

⁶⁸ Litvack, J., Ahmad, J. and Bird, R. (1998). Rethinking Decentralization At The World Bank. Washington: World Bank.

Market decentralisation:

*Focuses on creating conditions that allow goods and services to be produced and provided by market mechanisms sensitive to the revealed preferences of individuals. This form has become more prevalent, due to recent trends toward economic liberalization, privatization and the demise of command economies.*⁶⁹

Market decentralisation represents a growing tendency among governments to look beyond the public sector for service delivery. It does not mean that central government transfers its responsibility for service delivery elsewhere; nor does it mean that all authority is delegated. Central government remains the ultimate authority over essential national matters and has the power and, in fact, the responsibility to monitor and oversee decentralised functions. Rather, it involves considering how to provide public services where capacity and resources are lacking.

In South Africa, there are a number of examples where basic services are provided by private organisations through arrangements such as public-private partnerships (PPPs) or municipal service partnerships (MSPs). These may resemble aspects of market decentralisation *per se* - but such service delivery arrangements are more a consequence of the changing macro-economic policy outlook of the ruling party, such as its move away from the ANC's initial nationalisation policies as reflected in the 1994 Reconstruction and Development Programme (RDP) which favoured centralised service delivery, to one which promotes local government self-sufficiency through cost recovery as embodied in the 1996 Growth, Employment and Redistribution Strategy (GEAR), as well as the Accelerated and Shared Growth Initiative (ASGI).⁷⁰

Despite the change in macro-economic policy, the national government directive remains that government must deliver as much as possible - and should only seek private sector involvement where and when necessary. Privatisation especially is not a popular service

⁶⁹ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development. Pp. 22-23.

⁷⁰ Bruggemans, C. (2003). A Change of Pace. Johannesburg: Wits University Press.

delivery option in South Africa. National government has never regarded the delegation of service delivery responsibilities to the private sector as appropriate.⁷¹

*The transfer of ownership is not an option for core municipal services, particularly water, electricity and solid waste collection and disposal. Given the central role that these services play in meeting the material, social and economic needs of communities, it is undesirable that ownership of associated infrastructure and assets is removed from the public sphere.*⁷²

While this study devotes considerable time to issues of cost recovery, the latter is not seen as an example of market decentralisation, but rather as a national directive to municipalities associated with their devolved administrative and financial functions. For these reasons, this thesis focuses primarily on the three dimensions identified by Grindle, namely those of political, administrative and fiscal decentralisation, with particular emphasis on local government and its service delivery obligations.⁷³ Each dimension assumes a mix of three forms: deconcentration, delegation and devolution.

2.3 Forms of Decentralisation

Decentralisation is not applied uniformly but takes many forms and can be put into effect in many ways. Most commonly, authors distinguish between three types; namely, deconcentration, delegation, and devolution. Each of these forms of decentralisation denotes a unique set of central-local relationships.

2.3.1 Deconcentration

Deconcentration refers to central government dispersing responsibilities for certain services to regional branches. It does not involve the transfer of authority to lower levels of government. Deconcentration does not translate into autonomy or independence of these

⁷¹ See, for example, The White Paper on Municipal Service Partnership (2000); The Growth, Employment and Redistribution Strategy (GEAR); and The Accelerated and Shared Growth Initiative (ASGI) policy documents.

⁷² The White Paper on Local Government. (1998). Page 101.

⁷³ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. And Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development.

agencies. It mostly comprises establishing ‘field’ offices of the central government to assist with providing public services.⁷⁴ In other words, deconcentration is when central administrative structures assign certain functions within specific policy sectors to field-level public servants. This type of transfer of power is to an official appointed by and accountable to central government rather than to a local constituency. In a deconcentrated system of governance, field officers are charged with overseeing the implementation of national policies. In some cases, deconcentration may exist alongside devolved local government units as part of ensuring central government compliance. As such, deconcentration can be a strategy to extend central control and closely supervise and monitor the implementation of national directives.⁷⁵ Deconcentration may very well lead to greater technical efficiency, but it is not aimed at local democratisation or increasing public representation and accountability.⁷⁶

2.3.2 Delegation

Delegation entails the transfer of decision-making and administrative authority for clearly defined tasks from central government to sub-national units of government or semi-autonomous institutions.⁷⁷ Compared to deconcentration, delegation allows for far more discretion in decision-making, but sub-national units of government remain first and foremost accountable to central government. Any autonomy in administrative decision-making and policy implementation is limited to certain activities, and remains under central control.⁷⁸

Deregulation is regarded by Cohen *et al* as a type of delegation.⁷⁹ It entails the removal of legal controls thereby opening up the opportunity for the private sector to provide goods and services formally held under state monopoly. Their contention is that “under conditions of

⁷⁴ Litvack, J., Ahmad, J. and Bird, R. (1998). Rethinking Decentralization at The World Bank. Washington: World Bank.

⁷⁵ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press.

⁷⁶ Turner, M and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan.

⁷⁷ Litvack, J., Ahmad, J. and Bird, R. (1998). Rethinking Decentralization at The World Bank. Washington: World Bank.

⁷⁸ Litvack, J., Ahmad, J. and Bird, R. (1998). Rethinking Decentralization at The World Bank. Washington: World Bank.

⁷⁹ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press.

reasonably free choice, the provision of some public goods is more economically efficient when a large number of providers offer citizens more options and choices.”⁸⁰

The argument is that deregulation creates competition amongst service providers, which in turn promotes efficiency since citizens have the option to choose their preferred service provider. Cohen *et al* argue that deregulation can end inefficient and ineffective states by downsizing bloated, costly and ineffective central public sectors. Competition “promotes administrative accountability through competition, which in turn can promote democratic processes to the extent that non-state institutions are involved in public service provision.”⁸¹

2.3.3 Devolution

A third type of decentralisation referred to in the literature is devolution. Turner *et al* explain that devolution is often regarded as the only true form of decentralisation because of its inherent democratic value. Devolution, they argue, is the

*Transfer of authority to sub-national governments electorally accountable to sub-national populations’ and is the only authentic form of decentralization.*⁸²

This form is closely associated with democratic local governance in that it confers decision-making authority from central government on local government or quasi-autonomous units of government. In a devolved system, local governments have clear and legally recognised geographical boundaries over which they exercise authority and within which they perform public functions. Local governments also have some authority over local policy and allocating financial resources. Devolved local governments are expected to raise their own revenue, and are accountable to their local constituencies through regular, competitive and popular local elections.⁸³

⁸⁰ Turner, M and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan. Page 158.

⁸¹ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development. Page 12.

⁸² Turner, M and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan. Page 154.

⁸³ Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

Table 2.1 summarises the key measures of assessment and illustrates the variations and interconnectivity between the dimensions and forms of decentralisation.

Table 2.1: Dimensions and Forms of Decentralisation

		DIMENSION OF DECENTRALISATION		
		Political	Administrative	Financial
FORMS OF DECENTRALISATION	Deconcentration	Central appointment of regional and local field agents/officials	Minimal service provision such as refuse collection, street lighting.	Minimal user fees and rates determined by central government
		Recall of regional and local field agents/officials	Administrative appointments by central government	National budgeting process
		Local executive appointed by central government	Salaries set and paid by central government	No taxing powers
		Political parties organised along national lines	Terms of employment set by central government	No authority to incur debt
			Administrative appointments based on patronage	No borrowing powers
	Delegation	Accountability to central government	Basic service provision, excluding social services	Minimal taxing powers with rates determined by central government
		Local executives put forward by central government	Service provision on agency basis	Majority of fiscal transfers are conditional
				Minimal borrowing powers
	Devolution	Regular, competitive local government elections	Extensive exclusive service delivery functions.	Authority to determine service delivery rates and user fees
		Accountability to local constituents	Administrative appointments by local council	Majority of fiscal transfers are unconditional
Local executive elected by popular vote		Authority to hire and fire and determining terms of employment and salaries	Own revenue matches responsibilities and own expenditure	
		Assignment of functions based on subsidiarity	Borrowing powers Local taxing powers	
Local political parties represent local interests and can challenge central authority.		Bureaucracies insulated from systems of patronage	Minimal reliance on intergovernmental transfers	
Effective public participation		Responsible for local economic development	Authority to incur debt and independent local budgeting	
Authority for local policy-making			Authority for procurement	
Effective input in national policymaking processes			Authority for cost recovery	

Although distinguishing between deconcentration, delegation, and devolution helps in defining centre-local relationships, such relationships are not uniform or static. Many local governments experience all three forms of decentralisation at the same time. This not only results in a complex division of powers and functions, but each includes a unique set of intergovernmental relationships. As Grindle aptly states:

*It may matter less what kind of decentralization characterizes specific policy areas than how local governments and local officials adapt to new demands and expectations and how they manage the full complex of decentralized responsibilities.*⁸⁴

2.4 Assessing Decentralisation

Based on the literature, decentralisation tends to be conceptualised as the degree or extent of the transfer of power and authority to sub-national levels of government. It is seen as an indicator of autonomy, independence, and discretion which is regarded as *good* for service delivery, good governance and democracy. The general assumption is that decentralisation equals good governance, and centralisation does not - and that devolution is the only true form of decentralisation.

A number of studies have been preoccupied with assessing or measuring decentralisation, and were founded on the assumption that decentralisation by devolution is *the* true form of decentralisation: that the more autonomous local governments are, the more extensive decentralisation is.⁸⁵ The criteria are useful, but the respective findings are not necessarily helpful. The shortcoming of assessing decentralisation based on specific criteria is that it assumes that there is a *right* answer. In other words, it assumes that there is a specific template that must be followed. It neglects the political as well as the socio-economic context and how this may make some measures of assessment inappropriate or irrelevant. It treats each criterion in isolation from one another when in reality they are not.

⁸⁴ Grindle, M. (2007). *Going Local*. Princeton: Princeton University Press. Page 5.

⁸⁵ Ebel, R. and Serdar, Y. (2002). *On the Measurement and Impact of Fiscal Decentralization*. World Bank Policy Research Working Paper (2809). Washington: World Bank. And Faguet, J. (2004). *Does Decentralization Increase Government Responsiveness to Local Needs?* In Journal of Public Economics. Volume 88. Pp. 867– 893.

Despite the inherent shortcomings of such models of assessment, some of the criteria used to assess whether or not a country is politically, administratively or financially decentralised are briefly examined below. The rationale is that they reveal certain traits in governance, and can assist in understanding the interrelation between features of political decentralisation and those of financial or administrative decentralisation.

2.4.1 Measures of Political Decentralisation

Hutchcroft provides a set of questions the primary objective of which is to determine to what extent political decentralisation has resulted in local government autonomy to elect, appoint and design local policy, as well as its exposure to systems of patronage.⁸⁶ He regards these questions as critical in determining the level of decentralisation. For example:

1. *Are local executives appointed by the centre or elected by popular vote?*
2. *Are there effective mechanisms for popular participation at the local level either through elections or via less conventional means?*
3. *Are there municipal, provincial, national, and/or regional legislative bodies with substantial decision-making authority?*
4. *Is there a concentration of socioeconomic and/or coercive power in local patrons and bosses?*
5. *Is there a national legislature with significant decision-making authority?*
6. *Are national legislators elected or appointed?*
7. *To what extent does the electoral system provide for representation of local or regional interests in the national legislature?*
8. *Are political parties organised along national or local/regional lines, and what is their level of internal cohesion?*
9. *To what extent are administrative structures insulated from party patronage?*⁸⁷

⁸⁶ Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In Governance: An International Journal of Policy and Administration. Volume 14 (1). Pp. 23-53.

⁸⁷ Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In Governance: An International Journal of Policy and Administration. Volume 14 (1). Page 33.

According to Hutchcroft, one can expect a highly centralised political system to exhibit a combination of the following features: (1) local and regional officials are appointed by the centre; (2) there are few avenues for political participation at the local level; (3) sub-national units lack their own legislative bodies; (4) there are no local bosses to challenge the authority of the centre; (5) decision-making authority is concentrated in the national executive (with a weak or subservient national legislature); (6) a significant proportion of national legislators are appointed by the centre; (7) there is a Proportional Representation electoral system (and selection of candidates within this system is determined by a national political party); (8) all political parties are national in scope, and capable of enforcing national-level decisions and strategies throughout the country; and (9) bureaucracies are thoroughly penetrated by systems of patronage.⁸⁸

Conversely, a highly decentralised political system will have a significant combination of the following features: (1) local and regional officials are elected by popular vote; (2) there are numerous and well-institutionalised means by which political participation can flourish at the local level; (3) local governmental units have well-established legislative bodies able to assert their interests vis-à-vis the centre; (4) throughout the provinces, local bosses with high concentrations of socioeconomic and coercive power challenge the authority of the central government; (5) there is a national legislature with extensive decision-making authority; (6) all national legislators are elected, not appointed; (7) there is a single-member district plurality electoral system; (8) all political parties are local in scope and have little control over either their membership or candidates and officeholders who run for election and gain office under their banner; and (9) bureaucracies are well insulated from systems of patronage.⁸⁹

The conclusions to be drawn from Hutchcroft's measures are that political decentralisation as defined above is the ideal governance system. Variations on the ideal do not constitute devolved decentralisation.

⁸⁸ Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In Governance: An International Journal of Policy and Administration. Volume 14 (1). Pp. 23-53.

⁸⁹ Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In Governance: An International Journal of Policy and Administration. Volume 14 (1). Pp. 23-53.

2.4.2 Measures of Administrative Decentralisation

Cohen *et al* identify a number of key factors that ascertain the extent to which administrative decentralisation is implemented. The factors relate to the range of administrative local government functions and responsibilities and the extent to which local governments have autonomy in programme planning and project implementation, as well as to local governments' control over staffing, operations and maintenance matters.⁹⁰

A fundamental characteristic associated with administrative decentralisation is that of subsidiarity: the allocation of powers and functions to the lowest possible level of government.⁹¹ Subsidiarity calls for the lowest and closest levels of government to have responsibility and control over all municipal services. Only when the lower levels are incapable, must the matter become the responsibility of the next level of government.⁹² Sharma contends that administrative decentralisation is *achieved* if and only when local governments have the freedom to fire/hire or set the terms of employment for local government employees. They must also have the administrative regulatory authority to make by-laws as well as the freedom to contract out their own responsibilities.⁹³ The implication is unless the above criteria are met, a government is not fully administratively decentralised.

Executing stringent and formal assessments of decentralisation neglect the possibility that different levels of government may have different levels of technical and administrative capacity. Staff at local government level may not have adequate management skills, or experience in accounting and budgeting. The functions traditionally associated with local

⁹⁰ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press.

⁹¹ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press. And Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In Governance: An International Journal of Policy and Administration. Volume 14 (1). Pp. 23-53. And Sharma, C.K. (2005). *When Does Decentralization Deliver? The Dilemma of Design*. In South Asian Journal of Socio-Political Studies. Volume 6(1). Pp. 38-45.

⁹² Shah, A. and Thompson, T. (2004). *Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. World Bank Policy Research Working Paper (3353). Washington: World Bank.

⁹³ Sharma, C.K. (2005). *When Does Decentralization Deliver? The Dilemma of Design*. In South Asian Journal of Socio-Political Studies. Volume 6(1). Pp. 38-45.

government are limited to providing for refuse removal or street cleaning which do not require the same amount of expertise as that of the supply of clean water and sanitation.

2.4.3 Measures of Fiscal Decentralisation

The literature often identifies the extent of fiscal decentralisation as the key determinant as to whether a country is centralised or decentralised.⁹⁴ Fiscal decentralisation is measured by determining local government's financial autonomy. Indicators include assessing the extent of local financial responsibilities; central government involvement in local affairs; central government delivery of functions; local reliance on national funds; and local expenditures and revenues. In other words, the more financial autonomy local governments have, the more such a country is deemed to be decentralised.⁹⁵

Zhang, *et al*, for example present certain criteria or measures for determining the extent of decentralisation. They pose six questions for assessing fiscal decentralisation:

1. Do local governments have the authority to set the rates for local revenue?
2. Are the majority of fiscal transfers formula-based and unconditional?
3. Does local government revenue more or less match responsibilities?
4. Does local government revenue finance the majority of local expenditures?
5. Does local government revenue finance the majority of local government expenditures?
6. Do local governments have autonomy for procurement?⁹⁶

Their assumption is that fiscal decentralisation is only achieved if these questions are answered in the affirmative. As such, they argue that more fiscal autonomy translates into

⁹⁴ Bahl, R. and Smoke, P. (2004). Restructuring Local Government Finance in Developing Countries: Lessons from South Africa. Cheltenham: Edward Elgar Publishing. And Shah, A. (2004). *Fiscal Decentralization in Developing and Transition Economies: Progress, Problems and Promise*. World Bank Policy Research Working Paper 3282. Washington: World Bank.

⁹⁵ Bahl, R. and Smoke, P. (2004). Restructuring Local Government Finance in Developing Countries: Lessons from South Africa. Cheltenham: Edward Elgar Publishing. And Shah, A. (2004). *Fiscal Decentralization in Developing and Transition Economies: Progress, Problems and Promise*. World Bank Policy Research Working Paper 3282. Washington: World Bank.

⁹⁶ Zhang, T., and Zou, H. (1998). *Fiscal Decentralization, Public Spending, and Economic Growth in China*. In Journal of Economics. Volume 67(2). Pp. 221-240.

better or *fuller* decentralisation. The assumption is that the greater the financial responsibilities; the lesser the state involvement in local affairs; the lesser the reliance on state funds; and the higher local expenditures and revenues are - the more fiscally decentralised a system of governance is, and therefore the better public services will be provided.

One of the key questions posed in this study is whether South Africa's particular system of decentralisation is, indeed, conducive to autonomous local governance and to effective and sustainable basic service delivery.

2.5 Centralised or Decentralised Service Delivery

The attempts at measuring the extent of decentralisation in any particular country advance a belief that decentralised service delivery by devolution is *better*. However, despite the overwhelming theoretical support for decentralisation, as well as attempts at providing models and criteria for assessment, it remains to be proven whether a centralised or a decentralised system of governance provides services more effectively.

Turner *et al* make the important distinction that there is no clear-cut separation between centralised and decentralised governance, "rather they represent hypothetical poles on a continuum that can be calibrated by many different indices."⁹⁷ Most forms of government adopt a mixture of centralised and decentralised authority. This study will show that the same applies to local government in South Africa, and that the institutional framework fluctuates between centralist and decentralised designs. Whether it is contributing to better municipal service delivery is debatable. As Cohen *et al* argue, in some instances, centralisation may be more desirable and effective than decentralisation. They state that "some tasks must be centralised because to administratively decentralise them would introduce inefficiencies in their delivery."⁹⁸

⁹⁷ Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan. Page 152.

⁹⁸ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development. Page 14.

In heterogeneous societies, the central state can be a force of cohesion. In highly inegalitarian societies, central government can oversee the (re)distribution of public services, while decentralised governance can provide accommodation for minorities.⁹⁹ In other words, if the need for creating redistribution and equity is high, then such objectives are better served under a centralised system of governance. One argument in favour of central control is that *the mobility of recipients and the potential tax base are high*, and are not confined to one municipal jurisdiction, which makes it difficult for municipalities and is therefore better managed by central government. Linked to this reason is the need for financial stability which some think is better achieved at national level.¹⁰⁰ Central governments:

*are better placed to manage market stability and hence the stabilization and distribution objectives should be centralized. The stabilization objective should also remain centralized because most local level governmental units lack the stabilization tool of monetary authority.*¹⁰¹

Based on such arguments, both options of centralised and decentralised government have a/some relative advantage in their ability to deliver public services.

*The dilemma of balancing the contrasting forces of centralization and decentralization,... is more pronounced in the developing and transition countries, the nations that are on one hand trying to stabilize their economies while on the other ... [are] trying to invest more decision making power in populations that have long been disenfranchised.*¹⁰²

⁹⁹ Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In Governance: An International Journal of Policy and Administration. Volume 14 (1). Pp. 23-53.

¹⁰⁰ For example, Bahl, R. and Smoke, P. (2004). Restructuring Local Government Finance in Developing Countries: Lessons from South Africa. Cheltenham: Edward Elgar Publishing. And Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

¹⁰¹ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development. Page 6.

¹⁰² Sharma, C.K. (2005). *When Does Decentralization Deliver? The Dilemma of Design*. In South Asian Journal of Socio-Political Studies. Volume 6(1). Page 42.

Some argue that decentralisation may fail for a number of reasons, including weak state capacities at all levels, the shaky financial viability of local government, the size and redundancy of local government, and problems overcoming the legacies of authoritarianism and patronage:¹⁰³

*...greater decentralization does not necessarily imply greater democracy let alone 'power to the people' – it all depends on the circumstances under which decentralization occurs.*¹⁰⁴

The merits for assessing whether a state is centralised or decentralised is also limited by the fact that it is not always obvious whether a state is centralised or decentralised. Grindle stresses that despite a state being defined legally as a decentralised system, the limitations placed on local governments determine its true autonomy. She notes that in some cases national governments set the regulatory framework; determine the division of revenue; approve municipal budgets; determine local user fees; sanction municipal development plans; appoint and dismiss local government officials; and disallow municipal borrowings.¹⁰⁵ Why such limitations exist is not always obvious.

Cohen *et al* postulate that in some cases national politicians may be reluctant to cede power. They state that “highly centralised states find it difficult to do more than pursue carefully controlled and centrally dominated deconcentration.”¹⁰⁶ As such, central bureaucracies resist the delegation of responsibilities, and when responsibilities are actually transferred there is rarely a corresponding transfer of financial resources. Those resources that are available at the local level are often poorly deployed by inexperienced, ill-trained and underpaid field staff.¹⁰⁷

¹⁰³ Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: The Johns Hopkins University Press.

¹⁰⁴ Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan. Page 172.

¹⁰⁵ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

¹⁰⁶ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development. Page 14.

¹⁰⁷ Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan.

Cohen *et al* reveal that a lack of resources necessary for service provision may set up the delegated government institution for potential failure before it has even begun.¹⁰⁸ Litvack *et al* claim that:

*[T]he political decision to devolve powers from central government, for example, can only get translated into actual powers being shifted if sub-national governments have the fiscal, political, and administrative capacity to manage this responsibility.*¹⁰⁹

As such, decentralisation may necessitate the establishment of another layer of government, which means additional resources and increased public expenditure. In some cases, a lack of skilled staff to fill these newly established posts may result in them being filled by inexperienced or incompetent staff.¹¹⁰

Each dimension of decentralisation supposedly enhances service delivery through increased accountability and transparency of policy-makers and service providers. Politically, residents get to vote municipal officials into office, and non-performing officials can be unseated in the next election. Administratively, the allocation of service delivery responsibilities to local government offers local residents direct access to service providers, shifting accountability to the local authorities rather than to the central government. And financially, local fiscal autonomy over own-source revenue raising and expenditure increases government responsiveness to local preferences and needs.

In reality, it is not possible to fully separate the different dimensions of decentralisation. The concept, in its application, is far more complex than any typology can provide. For example, some states may have devolved political power to lower levels of governments, while administrative and financial decentralisation is limited to deconcentration.

Shah is cautious, even apprehensive, of why some governments choose to decentralise. He doubts whether governments' agendas are directed towards democratisation. He believes that

¹⁰⁸ Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan.

¹⁰⁹ Litvack, J., Ahmad, J. and Bird, R. (1998). Rethinking Decentralization At The World Bank. Washington: World Bank. Page 2.

¹¹⁰ Turner, M. and Hulme, D. (1997). Governance, Administration and Development. London: MacMillan.

“the decision to decentralise may have more to do with short-term political considerations of politicians rather than being based on the perceived benefits of decentralisation in the long run.”¹¹¹ Shah takes it a step further by insinuating that it could be a deliberate strategy by central government to extend their control over local authorities. His concern highlights the fact that implementing a system of decentralisation may not necessarily be to establish democratic local governance. Rather, it may very well be applied to strengthen central control and authoritarianism as opposed to promoting local democracy. Regardless, he does acknowledge that decentralisation is sought because of its assumed potential to deliver public services more effectively.¹¹²

Conclusion

The majority of the literature on decentralisation claims that despite some of its limitations, establishing sub-national government institutions strengthens democracy by empowering local communities to participate in governance and development processes, which in turn improves the effectiveness of service delivery. Decentralisation is widely accepted as integral to better public sector governance and performance. Some studies have experimented with drawing up models for improving the ability of administrative systems to provide public services in an effective, efficient and accountable way.¹¹³ However, none have proved perfect, nor are they necessarily useful. At best, they raise fundamental issues which, if ignored, can negate the presumed advantages of decentralisation.

¹¹¹ Shah, A. and Thompson, T. (2004) *Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. World Bank Policy Research Working Paper (3353). Washington: World Bank. Page 5.

¹¹² Shah, A. and Thompson, T. (2004) *Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. World Bank Policy Research Working Paper (3353). Washington: World Bank.

¹¹³ Hutchcroft, P. (2001). *Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power*. In Governance: An International Journal of Policy and Administration. Volume 14 (1). Pp. 23-53. And Litvack, J., Ahmad, J. and Bird, R. (1998). Rethinking Decentralization At The World Bank. Washington: World Bank. And Sharma, C.K. (2005). *When Does Decentralization Deliver? The Dilemma of Design*. In South Asian Journal of Socio-Political Studies. Volume 6(1). Pp. 38-45. And Shah, A. and Thompson, T. (2004) *Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. World Bank Policy Research Working Paper (3353). Washington: World Bank.

The literature concludes that a workable decentralisation system is a matter of sequencing, alignment and coordination among the different levels of government. Of interest is the approach or style of implementing decentralisation, of how intergovernmental relations are designed or structured.

*Decentralization means not only a complex set of new responsibilities but also a series of different relationships with other levels of government that have to be managed simultaneously...they are expected to perform - with new mandates and new rules of the game...*¹¹⁴

Although decentralisation has brought significant new powers to local government in South Africa, it has also brought greater service delivery responsibility and challenges. Political decentralisation has meant the introduction of free, fair and competitive local elections enabling the replacement of central government appointed officials with popularly elected representatives. Administratively, decentralisation has led to the distribution of basic service delivery functions among spheres of government. Fiscal decentralisation has resulted in local municipalities being made responsible for managing their own budgets, generating their own revenue and recovering their own costs.

This study, though, is not about determining to what extent South Africa is a decentralised state, nor will it propose what needs to be done to make it a decentralised state: it is whether its current decentralised system of governance is conducive to sustainable local government service delivery. The purpose of this thesis is not to design a model for decentralisation. Rather, it aims to examine the transformation of local government in South Africa into a sphere of government which is constitutionally defined as the fundamental sphere responsible for the delivery of basic services. As such, the question is not whether decentralisation is good or bad for service delivery in South Africa, but whether it works, whether its current configuration is conducive to efficient and effective local service delivery.

The distinctions between deconcentrated, delegated and devolved authority are helpful in identifying the levels of local government autonomy. However, it will be argued that the value of any assessment of decentralisation does not lie in determining whether a function is

¹¹⁴ Grindle, M. (2007). Going Local. Princeton: Princeton University Press. Page 5.

deconcentrated or devolved, but rather what the extent of local government autonomy is. Do local governments have the administrative power to adjust services and budgets to match local preferences? Whether they have direct political authority and whether can they make and implement policy independently. Whether they have adequate sources of funds and discretion.

This chapter has shown that decentralisation is a mixture of political, administrative and fiscal functions, and that each can take different forms. Subsequent chapters will consider how the resultant permutations influence the ability of municipalities in South Africa to provide basic services. It will investigate the implementation of decentralisation in South Africa by illustrating a far more complex and interesting mix of the different forms and dimensions of decentralisation, which are implemented for different reasons and with different results.

The next chapter will explore the dimension of political decentralisation by examining the introduction of local government as a democratic sphere of government in South Africa. It takes a critical look at the reconfiguration of the political landscape, as well as the creation of local government processes, systems and structures and the implications thereof for local municipalities.

CHAPTER THREE

POLITICAL DECENTRALISATION

Introduction

One of the objectives of this chapter is to show how complicated and drawn-out the task of transforming the apartheid government's highly centralised system of government has been, a system where local government authorities were appointed by central government and where public participation was non-existent. It examines to what extent the new democratic dispensation accommodates political decentralisation. Political decentralisation is concerned with the transfer of political power and authority to sub-national levels of government. It most often provides for local government to be democratically elected, with the authority to pass by-laws in their sphere of jurisdiction. It enables citizen participation, therefore making local government answerable to their local constituencies as opposed to central government.

This chapter presents a predominantly historical narrative of the local government transformation process between the 1980s and 1990s which culminated in the creation of local government as a democratically elected and autonomous constitutional sphere of government. In this respect, the chapter commences by describing apartheid local government and the initial reforms initiated by the then apartheid government.

More specific attention is paid to the multiparty local government negotiation process that began in earnest in the early 1990s and how this set in motion a widespread range of reforms such as the reconfiguration of the apartheid state. The local government demarcation process is identified as one of the most significant features in the dismantling of apartheid-created racial and geographical boundaries. The demarcation of municipal boundaries was complex, contentious and on-going, and made even more difficult in the absence of a final legislative framework for local government.

The chapter then examines the post-apartheid legislative framework of local government which was primarily informed by the local government negotiations process. It focuses on the Constitution with regard to the assignment of political power and authority to local government and more particularly to the different municipal categories established by the Constitution.

The Constitution is sovereign and from it flows a number of local government acts of legislation and policies setting up the legislative framework for local government. This policy framework provides for local autonomous governance, cooperative governance, as well as avenues for public participation. In this respect, this chapter critically investigates the extent of local political autonomy in practice by examining the power and authority of local government in the intergovernmental framework, questioning local government's status as a *distinctive, interdependent and interrelated* part of a system of cooperative government.¹¹⁵ Legislation obliges local government to create independent ward committees in municipalities' areas of jurisdiction as avenues for public participation. However, this chapter suggests that ward committees offer no opportunity for deepening local autonomy.

The argument of this chapter is that in South Africa the nature of political decentralisation has set the agenda for the subsequent decentralisation of administrative and fiscal powers to local authorities. This study regards the unfolding of political decentralisation in South Africa as a defining factor in how administrative and financial powers and functions have become decentralised, and what the consequences have been for delineating the extent of local government autonomy.

3.1 Apartheid Local Government

The political mandate of separate development during apartheid translated into the spatial fragmentation of South Africa as whole. Legislation enforced strict racially-based settlement patterns, supported by administrative systems and institutional arrangements. Rigorous apartheid policies prescribed residential settlement according to race.¹¹⁶ At a national level, apartheid legislation, such as the Bantu Authorities Act of 1951, resulted in the creation of four independent Homelands or Bantustans¹¹⁷ where Africans were expected to live under the leadership of chiefs. Within the boundaries of the Republic of South Africa, six self-

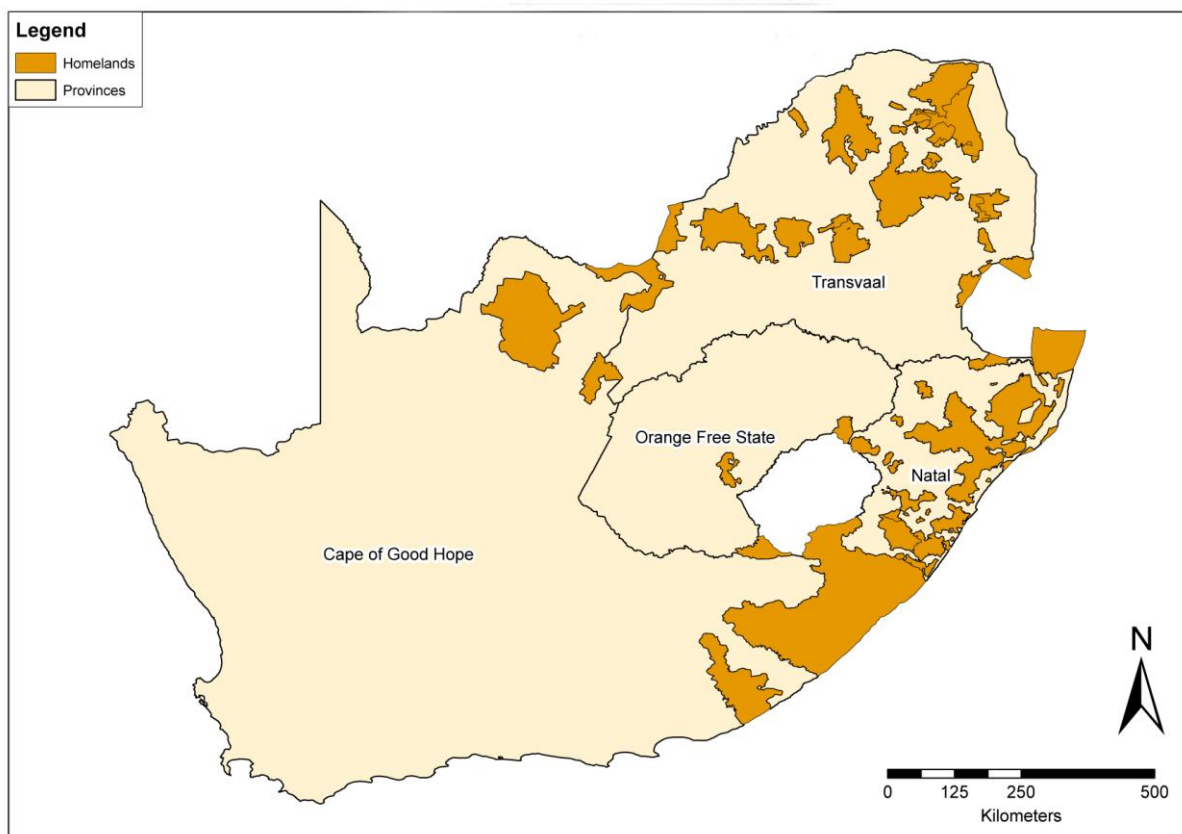
¹¹⁵ Section 40 of the Constitution of South Africa. (Act 108 of 1996).

¹¹⁶ Harrison, P., Huchzermeyer, M., Mayekiso, M. (Eds.). (2003). Confronting Fragmentation: Housing and Urban Development in a Democratising Society. Cape Town: University of Cape Town Press. And Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹¹⁷ Namely Transkei, Bophuthatswana, Venda and Ciskei.

governing territories were established.¹¹⁸ (See Map 3.1). This in effect translated into the apartheid government renouncing national government responsibility for providing infrastructure and service delivery to African people. This was, in obscure terms, a type of decentralisation in that it created the perception that each race, within prescribed geographical spaces, was authorised to govern itself. Homelands were declared independent and were not considered the responsibility of the South African government.¹¹⁹ Although the six self-governing territories remained in South Africa, they were not directly administered by the national government, and received partial autonomy, but were never granted independence.¹²⁰

Map 3.1 Homelands, Self-Governing Territories and Apartheid Provincial Boundaries



Source: Gijsbertsen, B. (2009). Department of Geography. University of KwaZulu-Natal.

¹¹⁸ Namely Gazankulu, KwaZulu, KaNgwane, Lebowa, KwaNdebele and QwaQwa.

¹¹⁹ Smith, T. (2003). *Urban Fragmentation, Inequality and Social Justice: Ethical Perspectives*. In Harrison, P., Huchzermeyer, M., Mayekiso, M. (Eds.). (2003). Confronting Fragmentation: Housing and Urban Development in a Democratising Society. Cape Town: University of Cape Town Press.

¹²⁰ Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

Besides the creation of separate homelands and self-governing territories, apartheid also created segregated settlement patterns in and around urban areas. The Natives Resettlement Act (1954) entitled government to relocate Africans to separate townships. Apartheid legislation intentionally shaped the spatial fragmentation of urban cities in that it enforced racial residential segregation by forcibly resettling Black people in *own group* areas. Different races were confined to specific *group areas* and *townships* and were removed from the Central Business District (CBD) which was reserved for whites.¹²¹ Deegan claims that more than 3.5 million Black people were forcibly removed or relocated between 1955-1980.¹²²

Van Donk *et al* describe how during apartheid, local government structures were erected to meet the policy objectives of the state.

*The state projected an image of urban areas as white areas, where black labourers would stay temporarily - in racially segregated areas - for the duration of their employment. It was therefore only in areas designated as 'white' that fully fledged municipalities (white local authorities) were set up.*¹²³

Different types of local government authorities were set up in respective areas to execute a series of central government administrative functions; however, their accountability was to central government, not to local constituencies. As such, political decentralisation was nothing more than deconcentration, where central government extended its power and control to provinces and local governments - the other two tiers of government which were regarded

¹²¹ Smith, T. (2003). *Urban Fragmentation, Inequality and Social Justice: Ethical Perspectives*. In Harrison, P., Huchzermeyer, M., Mayekiso, M. (Eds.). (2003). Confronting Fragmentation: Housing and Urban Development in a Democratising Society. Cape Town: University of Cape Town Press.

¹²² Deegan, H. (2001). The Politics of the New South Africa: Apartheid and After. Prentice Hall: Cape Town.

¹²³ Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers.

as subservient to the central state. There was no transfer of authority to other levels of government.¹²⁴

Numerous apartheid laws intentionally discriminated against Black South Africans and were strictly enforced, dictating Black people's movements and access to basic services.¹²⁵ The Abolition of Passes and Coordination Documents Act (1952) prescribed that all Africans had to carry a reference book that had to be signed monthly by their employer as proof of employment, thereby limiting access to White areas through the pass system. The Reservation of Separate Amenities Act (1953) enforced social segregation in public amenities such as cinemas, restaurants, sports facilities and later schools and tertiary institutions.¹²⁶

The apartheid cities were demarcated into separate residential and commercial districts. African, Indian and Coloured South Africans had no ownership rights and had to reside in townships located on the outskirts of the CBD. These areas were owned and administered by local agencies of the apartheid government.¹²⁷ Outside the townships, all local areas were administered by white-elected city councils, with some having established committees which allowed for some input from Indians and Coloured. Africans were only represented in advisory committees in townships. According to McCarthy, such unequal decision-making power resulted in the allocation of resources, infrastructure and service delivery to predominantly white areas.¹²⁸

The geographical distribution of settlement resulted in White suburbia, suitably developed and conveniently located close to employment and urban facilities. Beyond these suburbs, further away from town, Indian and Coloured people were allowed to reside. These areas tended to be located in or near industrial zones. Expanding further outward, land was

¹²⁴ McCarthy, J. (1992). *Local and Regional Government*. In Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹²⁵ Deegan, H. (2001). The Politics of the New South Africa: Apartheid and After. Cape Town: Prentice Hall. Page 25.

¹²⁶ Maharaj, B. (1992). *The Spatial Impress of the Central and Local States*. In Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹²⁷ McCarthy, J. (1992). *Local and Regional Government*. In Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹²⁸ McCarthy, J. (1992). *Local and Regional Government*. In Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

allocated to African people. These areas had minimal infrastructure, no or little employment opportunities and were provided with minimal basic services.¹²⁹ In addition, these areas were highly overpopulated, often forcing people to live in squalor. Growing squalor reinforced underdevelopment, creating vast disparities between developed, well-serviced local government in White areas and underdeveloped, non-serviced local government in African areas. The result was an easily identifiable urban city, predominantly White, well-developed and separated from African, underdeveloped township areas.¹³⁰

Institutional structures of representation reinforced underdevelopment. White Local Authorities (WLA) were appointed by central government and had the authority to identify specific locations where Africans could reside and determine how they would be represented on Black advisory boards.¹³¹ This meant that WLAs could situate themselves where economic resources were concentrated, and their decision-making authority entitled them to spend their resources on the provision of public services in their own areas. Townships had minimal service delivery infrastructure and apartheid regulations limited retail and industrial developments in black areas. The strict settlement laws deterred industry from moving to outlying rural areas. The absence of amenities and shopping facilities in Black areas meant that the little income earned by Africans was spent in White urban areas. The sources of revenue in Black areas were limited to sorghum beer production, liquor sales and some income derived from rental and user fees.¹³² As such, it was inevitable that township areas would not have adequate infrastructure, nor would their residents have access to public services, leaving Black areas largely underdeveloped.¹³³

¹²⁹ Maharaj, B. (1992). *The Spatial Impress of the Central and Local States*. In Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹³⁰ Van Vuuren, D.J., Wiehahn, N.E., Rhodie, N.J. and Wiechers, M. (Eds.). (1999). South Africa in the Nineties. Human Sciences Research Council Publishers: Pretoria. And Maharaj, B. *The Spatial Impress of the Central and Local States*. In Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹³¹ Cameron, R. (2002). *Central-Local Financial Relations in South Africa*. In Local Government Studies. Volume 28(3). Pp.113-134.

¹³² Cameron, R. (2002). *Central-Local Financial Relations in South Africa*. In Local Government Studies. Volume 28(3). Pp.113-134.

¹³³ Van Vuuren, D.J., Wiehahn, N.E., Rhodie, N.J. and Wiechers, M. (Eds.). (1999). South Africa in the Nineties. Human Sciences Research Council Publishers: Pretoria.

3.1.1 Citizen Revolt and Apartheid Policy Reforms

In the early 1980s, the apartheid government faced continuous and persistent citizen revolt against the central appointment of local political structures of governance, which were regarded as undemocratic and illegitimate.¹³⁴ Pressure mounted on national government to democratise local government and provide equitable access to basic services. Anti-apartheid movements called for the democratisation of the state and demanded that all South Africans be entitled to universal suffrage. This period witnessed a series of attempts by the apartheid government to appease the growing demands for the democratisation of the state by making minimal legislative adjustments. One such response was the national government's enactment of the Black Local Authorities Act (Act No 102 of 1982). This Act supposedly established democratic self-government for Black communities but in reality was an insignificant deconcentration of political authority to local institutions which were appointed and answerable to central government. They were democratic only in terms of being a channel for residents to voice their needs; in reality, Black Local Authorities (BLAs) were merely structures set up and staffed by local residents approved of by national government. They also received no additional government funding.¹³⁵ Hence these local authorities were not regarded by the populace as legitimate but rather as an extension of the apartheid government.¹³⁶

A new constitution was enacted in 1984 which the apartheid government introduced as being racially representative. It replaced the Whites-only parliament with three separate houses: the House of Assembly (for Whites), the House of Representatives (for Coloureds) and the House of Delegates (for Indians). Africans were not officially represented. A distinction was also made between what was regarded as *own affairs* of one race group and *general affairs* referring to all race groups.¹³⁷

¹³⁴ Todes, A. (2006). *Urban Spatial Policy*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers.

¹³⁵ Cameron, R. (2002). *Central-Local Financial Relations in South Africa*. In Local Government Studies. Volume 28(3). Pp.113-134.

¹³⁶ Klug, H. (1993). *Self-Determination and the Struggle Against Apartheid* in International Law Journal. Volume 251. Pp. 294-295.

¹³⁷ Smith, D. (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

The president remained the Head of State holding executive and legislative power. Legislative decisions (such as the election of the president) were calculated by the 4:2:1 ratio of White, Coloured and Indian representatives which meant that, effectively, the will of the House of Assembly prevailed.¹³⁸ Such manipulation of legislative powers as well as the glaring exclusion of the African majority meant that in reality, decentralisation continued to be little more but the deconcentration of central power.

Civic unrests during the 1980s continued unabated, and forced the apartheid government to reconsider local government as it then existed.¹³⁹ A campaign of non-payment commenced. Black residents refused to pay for the few basic services they received, and forced the councillors of BLAs to resign in an attempt to 'make the country ungovernable'. This so-called *culture of nonpayment* caused a total breakdown of local government in many Black townships.¹⁴⁰

The national government was pressurised into creating new unified, non-racial democratic local authorities where people could participate fully in local government decision-making processes, and where resources would be shared equitably across different local authorities. In response, Regional Services Councils (RSCs) were established in 1985 to financially assist the failing BLAs with service delivery. The transfer of limited authority to RSCs became characteristic of decentralisation by delegation. The RSCs were granted authority to exact levies on industries located within their jurisdictions. The expectation was that RSCs would generate enough revenue so as to cross-subsidise service delivery. However, RSCs were still

¹³⁸ Klug, H. (1993). *Self-Determination and the Struggle Against Apartheid* in International Law Journal. Volume 251. Pp. 294-295.

¹³⁹ Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. And Swilling, M. and Boya, L. (1997). *Local Governance in Transition*. In Fitzgerald, P., McLennan, A. and Munslow, B. (Eds.). (1997). Managing Sustainable Development in South Africa. Cape Town: Oxford University Press.

¹⁴⁰ Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. And Swilling, M. and Boya, L. (1997). *Local Governance in Transition*. In Fitzgerald, P., McLennan, A. and Munslow, B. (Eds.). (1997). Managing Sustainable Development in South Africa. Cape Town: Oxford University Press.

not democratically elected, but were represented by councillors nominated by central government.¹⁴¹

3.2 The Local Government Transformation Process

As the pressure on the apartheid system began to increase, so too did popular calls for more substantive local government transformation.¹⁴² From the mid-1980s until the early 1990s national negotiations for a democratic South Africa took place. At the same time, negotiations took place between the apartheid government, the existing local government authorities and a number of local civic organisations. Resistance to apartheid rule was strongest in urban areas and residents in townships mobilised under the popular slogan: ‘one-city-one-tax-base’.¹⁴³ Protestors rallied against unequal revenue bases and demanded increased access to services, calling for the apartheid government to consolidate local government revenue and allocate it evenly across Black and White areas.¹⁴⁴

The apartheid government could no longer appease the majority calls for democratisation with nominal policy changes or new administrative structures. The African National Congress (ANC) and other anti-apartheid political parties were unbanned in February 1990, followed shortly by the release of Nelson Mandela. This set in motion the official multi-party negotiations, referred to as the Multi-Party Negotiating Process (MPNP) which proved to be

¹⁴¹The White Paper on Local Government. (1998). And Smith, D. (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹⁴² Mayekiso, M. (2003). *South Africa's Enduring Urban Crisis*. In Harrison, P., Huchzermeyer, M., Mayekiso, M. (Eds.). (2003). Confronting Fragmentation: Housing and Urban Development in a Democratising Society. Cape Town: University of Cape Town Press.

¹⁴³ Cameron, R. (2006). *Local Government Boundary Reorganisation*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. And Swilling, M. and Boya, L. (1997). *Local Governance in Transition*. In Fitzgerald, P., McLennan, A. and Munslow, B. (Eds.). (1997). Managing Sustainable Development in South Africa. Cape Town: Oxford University Press.

¹⁴⁴ Mayekiso, M. (2003). *South Africa's Enduring Urban Crisis*. In Harrison, P., Huchzermeyer, M., Mayekiso, M. (Eds.). (2003). Confronting Fragmentation: Housing and Urban Development in a Democratising Society. Cape Town: University of Cape Town Press.

central to the transformation of a non-racial South Africa, paving the way for the first democratic elections for South Africa which were held in June 1994.¹⁴⁵

3.2.1 Reconfiguring the Apartheid State

The first few years of negotiations saw many policy issues being debated. During this period, various political factors shaped regional government, determining the future of local politics in South Africa, and leaving it with an institutionally complex system. One of the fundamental policy questions was how to reorganise the apartheid state, and where local authorities would be situated.¹⁴⁶

While the theories on decentralisation state that local democratic elections are indicative of devolved political decentralisation, Ramutsindela *et al* pointed out that the legacies of apartheid could not be undone by simply establishing local democratic electoral processes. It also required the spatial and geographical restructuring of the country itself in order to remove the racially determined boundaries of the provinces, the self-governing territories as well as the homelands.¹⁴⁷ However, re-integration into South Africa was not straightforward. The homelands and self-governing territories were large areas, which were predominantly underdeveloped with little infrastructure and service delivery. The stark difference in infrastructure and service levels between homelands and self-governing territories compared to the White urban areas of South Africa presented a challenge for regional integration.¹⁴⁸

Lodge describes how the amalgamation of the separate regional administrations of homelands and self-governing territories proved complex as each administration had a different managerial style with limited capacity and technical expertise. Many lacked reliable data on

¹⁴⁵ Beavon, K. (1992). *The Post-Apartheid City: Hopes, Possibilities, and Harsh Realities*. In Smith, D. (Ed.). (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹⁴⁶ Deegan, H. (2001). The Politics of the New South Africa: Apartheid and After. Cape Town: Prentice Hall.

¹⁴⁷ Ramutsindela, M. and Simon, D. (1999). *The Politics of Territory and Place in Post-Apartheid South Africa*. In Journal of Southern African Studies. Volume 25 (3). Pp. 479-498.

¹⁴⁸ Smith, T. (2003). *Urban Fragmentation, Inequality and Social Justice: Ethical Perspectives*. In Harrison, P., Huchzermeyer, M., Mayekiso, M. (Eds.). (2003). Confronting Fragmentation: Housing and Urban Development in a Democratising Society. Cape Town: University of Cape Town Press.

the number of employees, or even on the location of government facilities such as offices, buildings and equipment.¹⁴⁹ He refers to these as the ‘legacies of homeland administration’.¹⁵⁰ As this study will illustrate, such legacies affect local municipalities as demarcation resulted in the amalgamation of these differently administered and under-resourced areas into historically White urban municipal jurisdictions.

Deegan argues that one of the most controversial issues during the negotiation period was what the nature of the relationship between central government and regions should be, whether these should be organised in a unitary or a federal state.¹⁵¹ The political diversity of South Africa’s pluralistic society made discussions on centralisation versus decentralisation complex and a highly sensitive topic.¹⁵² Understandably so, since this would define the degree of autonomy, power and authority bestowed on the different ethnic and racial groups under a new dispensation. In other words, it would define the forms of political decentralisation.

The ANC which represented the majority of South Africans, favoured a unitary state with power centralised. The Inkatha Freedom Party (IFP), a political party supported largely by Zulu people, wanted a devolved system of government within a unitary arrangement. The IFP’s support base was located primarily in the previous homeland of KwaZulu, where land was controlled by chiefs. The IFP preferred a unitary state configuration as opposed to any type of federal dispensation, because, as Deegan argues, they would financially benefit more by being included in the Republic of South Africa.¹⁵³ Decentralisation and the devolution of power to regional and local authorities would allow for a degree of self-determination, and hence control over their fiefdoms, while also being entitled to central support.

¹⁴⁹ Lodge, T. (2002). Politics in South Africa: From Mandela to Mbeki. Cape Town: New African Books. Pp. 32-33.

¹⁵⁰ Lodge, T. (2002). Politics in South Africa: From Mandela to Mbeki. Cape Town: New African Books. Page 33.

¹⁵¹ Deegan, H. (2001). The Politics of the New South Africa: Apartheid and After. Cape Town: Prentice Hall.

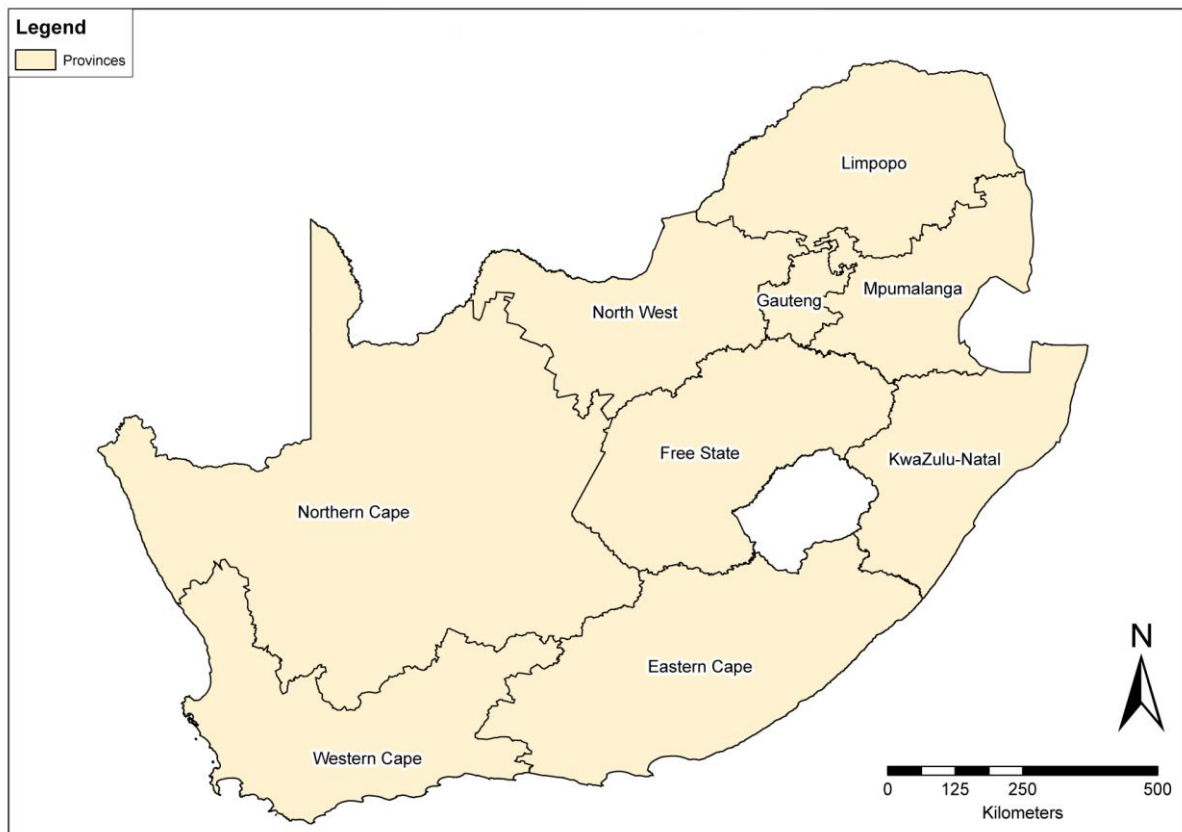
¹⁵² Klug, H. (1993). *Self-Determination and the Struggle Against Apartheid*. In International Law Journal. Volume 251. Pp. 294-295.

¹⁵³ Deegan, H. (2001). The Politics of the New South Africa: Apartheid and After. Cape Town: Prentice Hall.

Minority parties representing White interests, such as the ruling National Party (NP) and the Conservative Party (CP), sought ways for each community within a region to run their affairs as independently as possible. The CP sought an independent Afrikaner state. The NP favoured a federal dispensation, since this would protect the existing White geographical settlement patterns, while maintaining their economic base. For all intents purposes, the socio-economic wealth of White minorities would be best maintained in a federal system.¹⁵⁴

The MPNF endorsed the amalgamation of all four homelands as well as the six self-governing territories into the Republic of South Africa, demarcated into nine provinces of a unitary state. (See Map 3.2)

Map 3.2: The Nine Provinces of South Africa



Source: Gijsbertsen, B. (2009). Department of Geography. University of KwaZulu-Natal.

Lodge argues that the establishment of nine regional polities owed much to “the imperatives of a negotiated transition to democracy in which the ANC was persuaded of the wisdom of

¹⁵⁴ Deegan, H. (2001). *The Politics of the New South Africa: Apartheid and After*. Cape Town: Prentice Hall.

making concessions to smaller parties.”¹⁵⁵ The physical reconfiguration of the geographical and political landscape of South Africa provided the foundation for creating a democratic South Africa, where political power would be shared in a unitary state. During subsequent discussions, the significance of local authorities became more and more evident as well as the extent to which powers would be devolved to local authorities. Minorities groups wanted local governments with extensive autonomous decision-making powers. The devolution of substantial local power and authority was deemed critical to safeguarding the autonomy and self-determination of the various communities.¹⁵⁶

3.2.2 Local Government Negotiations

The early 1990s were characterised by a series of local government negotiations together with a number of legislative reforms. By the end of 1991, the ANC-aligned civic organisations had organised themselves into the South African National Civic Association (SANCO). In 1991, the Interim Measures for a Local Government Act (Act 128 of 1991) was passed by the White minority parliament, indicating a move towards a more democratic system of local government.¹⁵⁷ This legislation was further extended by the Provincial and Local Authority Affairs Amendment Act (Act 134 of 1992) signalling the way for negotiations between the ruling party and liberation movements on the political transformation of local government.¹⁵⁸

During 1992, the then Minister of Local Government entered into discussions with SANCO regarding the restructuring of local government. By early 1993, SANCO persuaded the Minister of Local Government to establish a national Local Government Negotiating Forum

¹⁵⁵ Lodge, T. (2002). Politics in South Africa: From Mandela to Mbeki. Cape Town: New African Books. Page 32.

¹⁵⁶ Swilling, M. and Boya, L. (1997). *Local Governance in Transition*. In Fitzgerald, P., McLennan, A. and Munslow, B. (Eds.). (1997). Managing Sustainable Development in South Africa. Cape Town: Oxford University Press.

¹⁵⁷ Smith, D. (1992). The Apartheid City and Beyond: Urbanisation and Social Change in South Africa. London: Routledge.

¹⁵⁸ Van Vuuren, D.J., Wiehahn, N.E., Rhodie, N.J. and Wiechers, M. (Eds.). (1999). South Africa in the Nineties. Pretoria: Human Sciences Research Council Publishers.

(LGNF), which proved to be a pertinent contributor to local government reforms.¹⁵⁹ The LGNF was made up of two delegations: a statutory delegation¹⁶⁰ and a non-statutory delegation.¹⁶¹ It did not replace any existing statutory body and did not have legal status. Its tasks were merely to explore, research and recommend options for local government restructuring to the Multi-Party Negotiating Process (MPNP) at the World Trade Centre in Kempton Park (Gauteng).¹⁶²

The establishment of the LGNF was a major achievement for local government transformation in South Africa. The purpose of the LGNF was to “contribute to the democratisation of local government and to bring about a democratic, non-racial, non-sexist and financially viable local government system.”¹⁶³ The LGNF drafted the Agreement on Finance and Services, essentially writing-off the non-payment arrears of Black Local Authorities.¹⁶⁴

Initially, the negotiations around local government reform illustrated the different stakeholders’ determination to uphold their respective policy positions. For example, the non-statutory delegation insisted on exclusive proportional representative local government elections, whereas the statutory delegation insisted on exclusive ward representation. The minority-led ruling party, the National Party (NP), wanted to protect its constituency in a future dispensation of majority rule, and argued strongly for the protection of minority rights at a local government level. The NP therefore called for municipal councillors to be elected on a constituency-based system and proposed a ward representation system, delineated into

¹⁵⁹ Swilling, M. and Boya, L. (1997). *Local Governance in Transition*. In Fitzgerald, P., McLennan, A. and Munslow, B. (Eds.). (1997). *Managing Sustainable Development in South Africa*. Cape Town: Oxford University Press.

¹⁶⁰ Representatives of national, provincial and local government; representatives of the United Municipal Executive and its four provincial affiliates; the National Committee of Local Government Associations representing United Municipalities of South Africa and Urban Councils of South Africa.

¹⁶¹ Represented by the South African Civics Organisation (SANCO).

¹⁶² Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). *Democracy and Delivery: Urban Policy in South Africa*. Pretoria: Human Sciences Research Council Publishers. And The White Paper on Local Government (1998).

¹⁶³ The Local Government Transition Act. (Act 209 of 1993).

¹⁶⁴ Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). *Democracy and Delivery: Urban Policy in South Africa*. Pretoria: Human Sciences Research Council Publishers. And The White Paper on Local Government (1998).

specific geographical boundaries.¹⁶⁵ Because of the geographical location of White suburbia, it would largely guarantee the election of a White political representative for that area. This would ensure that minorities would have some representation at local government level. On the other hand, non-statutory bodies called for local government representation based on a simple system of proportional representation which translates into majority-rule. The final agreement reached was that local councils would comprise 60 percent of councillors elected on a ward-system, and 40 percent of councillors elected by proportional representation.¹⁶⁶

The LGNF's recommendation became officially entrenched in the Local Government Transition Act of 1993 (Act 209 of 1993) (LGTA). The LGTA essentially offered a framework for a locally-negotiated transition process.¹⁶⁷ It established the policy framework for introducing a system of decentralised government prior to the first democratic elections. It also continued to inform local government transformation until 1996 when the Constitution of South Africa was enacted and the White Paper on Local Government drafted.¹⁶⁸ The LGTA was the first piece of legislation that seriously considered the introduction of a democratic local government for South Africa and signified an agreement reached after more than a decade's worth of negotiations between the ruling party of the day, and those who had previously been formally excluded from the political decision-making process.¹⁶⁹

The framework for transition adopted in the LGTA was incorporated in the Interim Constitution of 1993.¹⁷⁰ As such, democratic political decentralisation became official with

¹⁶⁵ Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. And The White Paper on Local Government (1998).

¹⁶⁶The Local Government Transition Act. (Act 209 of 1993). And Van Vuuren, D.J., Wiehahn, N.E., Rhodie, N.J. and Wiechers, M. (Eds.). (1999). South Africa in the Nineties. Human Sciences Research Council Publishers: Pretoria.

¹⁶⁷ Van Vuuren, D.J., Wiehahn, N.E., Rhodie, N.J. and Wiechers, M. (Eds.). (1999). South Africa in the Nineties. Pretoria: Human Sciences Research Council Publishers.

¹⁶⁸ The Local Government Transition Act. (Act 209 of 1993). And The Constitution of South Africa. (Act 108 of 1996).

¹⁶⁹ The Local Government Transition Act. (Act 209 of 1993).

¹⁷⁰ Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers.

the ANC committing itself to grant local government constitutional authority as a separate level of government after the first national democratic elections. Local government was seen as fundamental to fostering democracy, as well as conducive to economic and social development. For the first time in South Africa, decentralisation would entail devolution, by transferring political autonomy to local authorities.¹⁷¹

The LGTA initiated a three-phased local government transformation process: the pre-interim; interim; and final phases.¹⁷²

- The pre-interim phase commenced in April 1994 immediately after the first national and provincial democratic elections in South Africa.
- The interim phase began with the completion of the first local democratic elections in December 1995 and ended with the enactment of the Constitution in 1996.
- The final phase officially commenced once the Constitution was enacted.

Each phase brought about significant changes and reforms for local government. Combined, they illustrate how lengthy and disjointed the local government transformation process has been in South Africa. Particularly during the pre-interim phase, fundamental aspects of political decentralisation were debated concerning local electoral systems and processes as well as public participation. The demarcation and amalgamation of municipal boundaries were perhaps the most fundamental and complex local government reforms undertaken, and as this study will illustrate, this indirectly shaped the administrative and fiscal local government systems and procedures that were to be considered in the legislation that had yet to be drafted.

3.2.3 Local Government Demarcation

Since 1993, local government demarcation has been an on-going process, which has taken place in each of the three phases of local government transformation. The LGTA established

¹⁷¹ The Local Government Transition Act. (Act 209 of 1993) and the White Paper on Local Government (1998).

¹⁷² The Local Government Transition Act. (Act 209 of 1993) and the Constitution of South Africa. (Act 108 of 1996).

nine provincial demarcations boards that would be responsible for reviewing existing municipal boundaries and establishing new municipalities in time for the first local government elections which were planned for December 1995. These provincial boards were advisory bodies and assisted with the elimination of racial boundaries by creating jurisdictions that were racially more representative of South Africa.¹⁷³ The objective was to create ‘wall-to-wall’ municipalities encompassing the whole of South Africa. This entailed the abolishment of apartheid created boundaries and redetermination of municipal boundaries encompassing areas that were previously regarded as homelands and self-governing territories in time for the 1995/96 elections.¹⁷⁴ The end result was the delineation of 1280 new non-racial boundaries, accompanied by the appointment of interim local councils, enabling South Africa’s first democratic local government elections.¹⁷⁵ In essence, the objective of the first round of demarcation was to create politically representative and racially inclusive municipalities so that local democratic elections could be held.¹⁷⁶ As such, the demarcation process facilitated the political decentralisation process.

The 1998 Demarcation Act established an independent Demarcation Board. The Demarcation Board was responsible for rationalising and amalgamating previously separate municipalities into racially more representative authorities in time for the 1999/2000 election. (See Map 3.3 illustrating the reconfiguration of TLCs into Category B municipalities and Map 3.4 illustrating the 843 municipalities established in 1995 by the Demarcation Board).

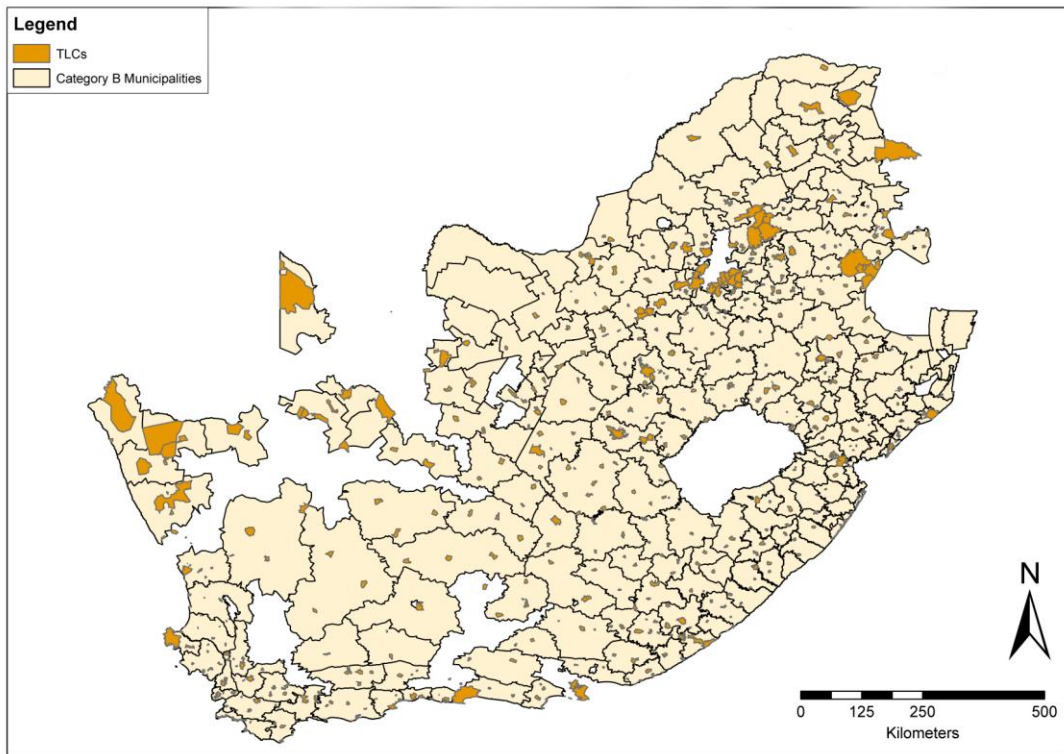
¹⁷³ Cameron, R. (2006). *Local Government Boundary Reorganisation*. In Pillay, U. (Ed.). (2006). *Democracy and Delivery: Urban Policy in South Africa*. Pretoria: Human Sciences Research Council Publishers: Pretoria. Pp. 76-106. And Cameron, R. (1999). *Democratisation of South Africa: A Tale of Three Cities*. Cape Town: Van Schaik.

¹⁷⁴ Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular.

¹⁷⁵ Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular.

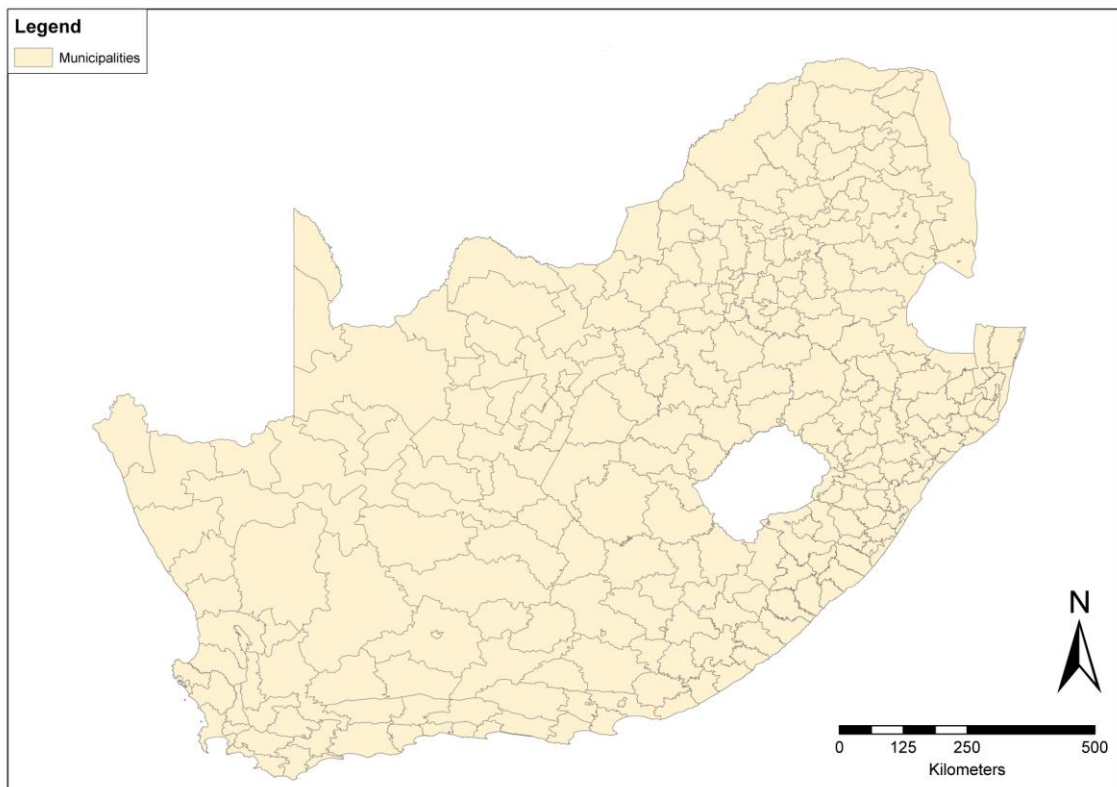
¹⁷⁶ Van Vuuren, D.J., Wiehahn, N.E., Rhodie, N.J. and Wiechers, M. (Eds.). (1999). South Africa in the Nineties. Pretoria: Human Sciences Research Council Publishers.

Map 3.3: Reconfiguration of Transitional Local Council into Category B Municipalities



Source: Gijsbertsen, B. (2009). Department of Geography. University of KwaZulu-Natal.

Map 3.4: Delineation of 843 Local Municipalities (1995).



Source: Gijsbertsen, B. (2009). Department of Geography. University of KwaZulu-Natal.

The Demarcation Board was heavily criticised for creating, firstly, too many municipalities, and secondly, financially unviable municipalities during the 1999/2000 demarcation process.¹⁷⁷ However, this outcome was inevitable given the vast administrative and financial disparities that existed between the more developed White areas compared to those of under-resourced and undeveloped homelands, the self-governing territories, as well as the townships

The LGTA set-up a hierarchical two-tiered local government system. Firstly, at a metropolitan level between the Transitional Metropolitan Councils (TMCs), as the secondary tier, and Metropolitan Local Councils (MLCs), as the primary tier of local government. Secondly, by defining Regional Councils (RCs) as the secondary tier of local government outside of metropolitan areas, thus incorporating the Transitional Local Councils (TLCs) and the Transitional Rural Councils (TRCs).¹⁷⁸ Immediately after the first local government elections held in December 1995, the Demarcation Board set forth to redefine municipal boundaries yet again - reducing the number of local authorities from 1280 to 843 comprising:

- 6 Transitional Metropolitan Councils (TMCs) in the largest metropolitan regions in the country. Each was further subdivided into Metropolitan Local Councils (MLCs);
- 42 Regional Councils (RCs) overseeing large expanses of mostly less populated rural and agricultural areas;
- 506 Transitional Local Councils (TLCs) in urban areas, incorporating larger tracts of rural areas into the former boundaries of cities;
- And 265 Transitional Rural Councils (TRCs), except in KwaZulu-Natal where traditional leaders objected to the establishment of democratically elected local councils.

¹⁷⁷ Atkinson, D. (2003) Municipal Administrative Restructuring in Non-metropolitan Areas. Pretoria: Human Sciences Research Council Publishing. And Bernstein, A. *The Challenge Facing South Africa's Cities*. In Cape Times, 14 October 1996. And Centre for Development and Enterprise. (2003). Local Government in South Africa: Priorities for Action. CDE Roundtable Discussions.

¹⁷⁸The Local Government Transition Act. (Act 209 of 1993).

Table 3.1: Municipal Demarcation During The Interim Phase

Provinces	TMCs	MLCs	RCs	TLCs	TRCs
Eastern Cape			6	94	76+7
Free State			4	80	15
Gauteng	4	12	2	14	9+10
KwaZulu-Natal	1	6	7	61	-
Mpumalanga			3	55	18
Northern Cape			6	64	42
Northern Province			2	13	36
North West			5	30	18
Western Cape	1	6	7	95	27
South Africa	6	24	42	506	265

Source: Adapted from Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular.

Local authorities experienced numerous implementation problems emanating from the two-tiered local government system. The Financial and Fiscal Commission argued that the two-tiered system in metropolitan areas was financially wasteful and impracticable.¹⁷⁹ Further criticism was targeted at the fact that both upper-tier TMCs and lower-tier MLCs were given autonomous powers and functions. This meant that each tier could pass its own budgets, and were employer bodies in their own right. Each set about developing its own full complement of senior officials. This resulted in significant over-investment of staff capacity across metropolitan areas, relative to what was required.¹⁸⁰ In addition, the operating budgets of the TMCs and individual MLCs had to balance collectively, not individually. In some cities this meant that MLCs could safely assume that their shortfall would be covered by the TMCs, meaning that MLCs had little incentive to contain expenditure. This resulted in poor financial management, control and accountability.¹⁸¹

¹⁷⁹ Financial and Fiscal Commission. (1997). Proposals on Provincial Own Revenue and Local Government.

¹⁸⁰ Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular. And Interview with Municipal Manager (eThekweni Metropolitan Municipality). Pietermaritzburg. 4 September 2007.

¹⁸¹ Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular. And Interview with Municipal Manager (eThekweni Metropolitan Municipality). Pietermaritzburg. 4 September 2007.

Outside the metropolitan areas, each province was demarcated into RCs. RCs were further demarcated into TLCs in and around urban areas, and TRCs in more rural areas. However, in KwaZulu-Natal and the Eastern Cape agreement could not be reached on where to establish TRCs since most of the land outside the urban areas was tribal land and under traditional leadership. Traditional leaders (or Chiefs) believed that the Demarcation Board cut across tribal areas, meaning that tribal land would be divided between different municipal councils and therefore would be affected differently by development programmes.¹⁸² The deadlock between government and traditional leaders on this issue meant that the RCs in KwaZulu-Natal and the Eastern Cape provinces were not demarcated into TRCs but were declared *Remaining Areas*, with no structure for direct democratic representation.¹⁸³

Tension arose around the issue of traditional leadership versus democratic representation at the RC level. At first, traditional leaders could take up no more than 20% of seats in a RC.¹⁸⁴ The number of seats of a RC was determined inversely. For example, if two traditional leaders reigned in the jurisdiction of a specific Regional Council, then that Council would have ten seats. In KwaZulu-Natal, however, 63 traditional leaders resided in Regional Council 5,¹⁸⁵ meaning that this Council was made up of 315 seats. (See Table 2.2). This calculation meant that the smallest Regional Council consisted of 125 councillors while the largest Regional Council in KwaZulu-Natal comprised 335 councillors. These were large councils given that the National Assembly comprises between 350 and 400 members of parliament.¹⁸⁶

Table 3.2: Representation in KwaZulu-Natal's Regional Councils

	RC 1	RC 2	RC 3	RC 4	RC 5	RC 6	RC 7
Seats	335	175	125	135	315	235	260
Total	1580 local councillors						

Source: Adapted from Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular.

¹⁸² Lodge, T. (2002). Politics in South Africa: From Mandela to Mbeki. New African Books: Cape Town. Page 32.

¹⁸³ Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular.

¹⁸⁴ Stanton, A. (1996). Local Government in Transition. Unpublished Report for the DBSA.

¹⁸⁵ The iNdllovu Regional Council, where the Pietermaritzburg-Msunduzi Transitional Local Council was situated.

¹⁸⁶ Section 46(1) of the Constitution of South Africa. (Act 108 of 1996).

The result in KwaZulu-Natal led to large all-encompassing RCs which incorporated nominated representatives from the TLCs and, in the absence of formal TRCs, nominated representatives from the *Remaining Areas* that fell outside the TLCs. RCs had little authority since they were composed of a mix of interest groups such as farmers, women, ratepayers and traditional leaders. Traditional authorities had no voting or decision-making powers since they were not democratically elected.¹⁸⁷

In essence, the demarcation of RCs resulted in the creation of large sub-national government units with insignificant political decision-making powers. As a result, provinces were delegated the task of setting the decision-making agenda, and the powers and functions of RCs were awarded by provincial proclamation. This system entrenched a hierarchical system of local government. The weaknesses of RCs meant that TLCs were dependent on the financial resource allocations determined by provinces. This system resulted in TLCs finding themselves subordinate to RCs as well as to provinces. The creation of large ineffective RCs under the auspices of provincial governments created political tension, administrative chaos and financial uncertainty for TLCs.¹⁸⁸

Many criticised the 1999/2000 demarcation process for having prioritised political accommodation above administrative and financial feasibility.¹⁸⁹ The White Paper on Local Government stated that the newly created boundaries failed to properly integrate urban and rural settlements. In search of creating politically neutral jurisdictions, demarcation created a large numbers of local authorities. These new structures, although highly controversial and often incapable of delivering local government services, were nevertheless a first step towards making local government democratic in that local municipalities finally represented all races and interest groups. As such, demarcation succeeded in making local authorities politically and racially representative – thus making great strides towards political decentralisation. In this respect, criticism of the Demarcation Board was unjustified since its

¹⁸⁷ Ministerial Advisory Committee on Local Government and Transformation. (2001) Interim Report on the Challenges Facing Local Government.

¹⁸⁸ Ministerial Advisory Committee on Local Government and Transformation. (2001) Interim Report on the Challenges Facing Local Government.

¹⁸⁹ For example, Atkinson, D. (2003) Municipal Administrative Restructuring in Non-metropolitan Areas. Pretoria: Human Sciences Research Council Publishing. And Bernstein, A. *The Challenge Facing South Africa's Cities*. In Cape Times. 14 October 1996. And Centre for Development and Enterprise. (2003). Local Government in South Africa: Priorities for Action. CDE Roundtable Discussions.

fundamental objective was to eradicate the racially determined apartheid boundaries and create wall-to-wall municipalities so that democratic local government elections could be held.¹⁹⁰

Newly amalgamated municipalities were administratively in a state of flux and financially non-viable. However, this was not a problem of demarcation but rather was because of the large discrepancies between traditional White areas and all other areas, which were caused by the structural and geographical fragmentation of apartheid separate development policies. It was an inevitable consequence of having to amalgamate the underdeveloped homelands and self-governing territories into an integrated system of municipal boundaries.¹⁹¹

Besides the geographical challenge of amalgamating previously excluded areas, demarcation also took place in the absence of a final legislative framework. In addition, the respective administrative and financial powers and functions of local government were also not yet defined. It was only in 1996 with the enactment of the Constitution of South Africa, and the Municipal Structures Act (Act 117 of 1998), that specific types of municipalities were identified. As such, the municipal boundaries delineated by the Demarcation Board during the interim phases became obsolete.

So far this chapter has presented a chronological narrative of events preceding and informing the current legislative framework for local government in South Africa. The negotiation processes of the 1990s, and the resultant Local Government Transition Act set in motion a series of processes, such as demarcation, and formalised a local electoral system composed of proportional representation and constituency-based representation. This has resulted in a politically decentralised system of local government based on the political compromises reached during the negotiation process.

¹⁹⁰ Cameron, R. *Local Government Boundary Reorganisation*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. Pp. 76-106.

¹⁹¹ Cameron, R. *Local Government Boundary Reorganisation*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. And Van Donk, M. and Pieterse, E. (2006). *Reflections on the Design of a Post-Apartheid System of (Urban) Local Government*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers.

The focus of the remainder of the chapter is on the emerging legislative framework of local government in a post-apartheid South Africa, beginning with the enactment of South Africa's first democratic Constitution. It is argued that the Constitution precipitated the need for a series of local government statutes in order to give effect to local government's constitutionally guaranteed autonomy. The subsequent section of this chapter identifies the nature of political decentralisation, both normatively and in reality. It questions to what extent the legislative framework decentralises political power and authority to local government, and how this has unfolded in practice.

3.3 The Constitution of South Africa (Act 108 of 1996)

With the enactment of South Africa's first democratic Constitution in 1996, local government became officially established as a constitutionally protected sphere of government. It entrenches local government as an autonomous sphere of government, whereby Municipal Councils are elected locally and are granted executive and legislative authority.¹⁹² Each has the autonomy to "govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution."¹⁹³ Based on this, political decentralisation by devolution appears to be firmly entrenched.

3.3.1 Local Government as a Sphere of Government

The devolution of political authority to sub-national levels of government is further evident in the establishment of three spheres of government: national, provincial and local government. Spheres (as opposed to tiers) are supposed to co-exist in a system of cooperative government, which are "distinctive, interdependent and interrelated."¹⁹⁴ Spheres must perform their functions within their own designated powers and functions, and not encroach on other spheres.¹⁹⁵ Instead, spheres "must assist and support one another"¹⁹⁶ and inform, consult and coordinate their actions with one another.¹⁹⁷

¹⁹² Section 151 (2) of the Constitution of South Africa. (Act 108 of 1996).

¹⁹³ Section 151 (3) of the Constitution of South Africa. (Act 108 of 1996).

¹⁹⁴ Section 40 of the Constitution of South Africa. (Act 108 of 1996).

¹⁹⁵ Section 41 (b) of the Constitution of South Africa. (Act 108 of 1996).

¹⁹⁶ Section 41 (b)(i) of the Constitution of South Africa. (Act 108 of 1996).

¹⁹⁷ Section 41 (b)(ii-iii) of the Constitution of South Africa. (Act 108 of 1996).

As such, local government is officially recognised as one of three spheres of government. It is no longer a tier of government, subordinate to provincial or national government, but a sphere with its own powers and functions, which is legally demarcated into geographical areas of jurisdiction. Local authorities are responsible for their own revenue, and accountable to their local constituencies through popular local elections. Local government is no longer a function of provincial or national government.¹⁹⁸ In theory, therefore, local government is officially recognised as a fully fledged part of South Africa's decentralised system of democratic governance.

At face value, local government powers as derived from the Constitution are no longer delegated from provincial government. Provinces have no power over municipal by-laws, only with regard to monitoring, support¹⁹⁹ and supervision²⁰⁰ - which are further defined in legislation such as the Intergovernmental Relations Framework Act, Municipal Structures Act and the Municipal Systems Act. (See Table 3.3 on page 83). Monitoring is limited to identifying the extent to which municipalities are meeting their legislative obligations. Where such shortfalls are identified, provinces must take measures that will support the municipality in question. Intervention can be as minimal as demanding access to municipal documents, (even if the function is exclusively a municipal one) or more extensive with the municipal functions being taken over by the province.

The objective of such a system of cooperative governance is to promote and facilitate collaborative intergovernmental decision-making. Cooperative governance is about coordinating and aligning priorities, budgets, policies and activities across interrelated functions and sectors. It aims to ensure a smooth flow of information within government, and between government and communities, with a view to enhancing the implementation of policy and programmes, while it must prevent and resolve intergovernmental conflicts and disputes amicably.²⁰¹

Political decentralisation is further embedded in the division of legislative and executive authority in all three spheres of government. (See Appendix 1 on the Structures of

¹⁹⁸ Section 152 (1-2) of the Constitution of South Africa. (Act 108 of 1996).

¹⁹⁹ Section 155(6) of the Constitution of South Africa. (Act 108 of 1996).

²⁰⁰ Section 139 of the Constitution of South Africa. (Act 108 of 1996).

²⁰¹ The White Paper on Local Government. (1998).

Governance in South Africa). Legislative authority under the auspices of the national sphere of government is vested in Parliament which is composed of the National Assembly (NA) and the National Council of Provinces (NCOP).²⁰² The former is elected by a national vote based on proportional representation, while the latter comprises ten delegates from each of the nine provinces. Local Government has *ex officio* representation at the NCOP. In the provincial sphere, legislative authority resides in provincial legislatures;²⁰³ and at the local sphere in municipal councils.²⁰⁴ The national legislature may only intervene in provincial or municipal legislative authority when this is in the interest of: national security; economic policy; maintaining national standards; setting national service standards; and setting the minimum required for the rendering of services.²⁰⁵

Executive authority in the national sphere of government resides with the President (who is elected by Parliament) as well as a Cabinet (which is appointed by the President). Ministers have executive authority over individually assigned national government departments. Executive authority in the provincial sphere of government resides with the Premier (who is elected by the provincial legislature), as well as with provincial Members of the Executive Council (MECs) who have executive authority over individually assigned provincial government departments. In the local sphere of government, executive authority is vested in the Mayor (who is elected by Council) and an Executive Committee (elected by Council) or a Mayoral Committee (appointed by the Mayor). The Executive oversees the work of the Municipal Manager who resides over local government department heads.²⁰⁶ Issues related to governance, such as intergovernmental disputes, are adjudicated by the Constitutional Court.²⁰⁷

3.3.2 The Delineation of Municipal Categories

In addition to prescribing the three spheres of government, as well as specifying each spheres' respective legislative and executive authority, the Constitution further provides for three categories of municipalities: Category A, B and C. It reiterates the notion of wall-to-wall municipalities: “the local sphere of government consists of municipalities which must be

²⁰² Section 44 of the Constitution of South Africa. (Act 108 of 1996).

²⁰³ Section 104 of the Constitution of South Africa. (Act 108 of 1996).

²⁰⁴ Section 156 of the Constitution of South Africa. (Act 108 of 1996).

²⁰⁵ Schedule 6 of the Constitution of South Africa. (Act 108 of 1996).

²⁰⁶ Municipal Structures Act. (Act 117 of 1998).

²⁰⁷ The Constitution of South Africa. (Act 108 of 1996).

established for the whole of the territory of the Republic”.²⁰⁸ A fundamental objective is to ensure the inclusion of all areas in the new local dispensation.

Category A municipalities or metropolitan municipalities have “exclusive municipal executive and legislative authority in their area.”²⁰⁹ They are characterised as areas where there is high population density; an intense movement of people, goods, and services; extensive development; multiple business districts and industrial areas. They are also areas with a “centre of economic activity with a complex and diverse economy and have strong interdependent social and economic linkages between its constituent units.”²¹⁰ As such, metropolitan councils are a category of municipality that largely operate independently of the other two categories.

In effect, the Constitution entrenches a two-tiered system of local government between Category B and Category C municipalities. Category B municipalities, or local municipalities, “share municipal executive and legislative authority in [their] area with a Category C municipality within whose area it falls”²¹¹ and Category C (or district) municipalities have “municipal executive and legislative authority in an area that includes more than one municipality.”²¹²

The rationale was to remove the urban-rural distinction between urban areas and regional councils.²¹³ With regard to the assignment of service delivery functions, the delineation of three different types of categories of municipalities and their location within the overall hierarchy of government remains an area of contestation, as the next chapter will highlight. The two-tiered relationship between Category C and Category B, it will be argued, has become more characteristic of delegation and deconcentration as opposed to devolution to the lowest level of government.

²⁰⁸ Section 151 of the Constitution of South Africa. (Act 108 of 1996).

²⁰⁹ Section 155 (1)(a) of the Constitution of South Africa. (Act 108 of 1996).

²¹⁰ The Municipal Structures Act. (Act 117 of 1998). And Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular.

²¹¹ Section 155 (1)(b) of the Constitution of South Africa. (Act 108 of 1996).

²¹² Section 155 (1)(c) of the Constitution of South Africa. (Act 108 of 1996).

²¹³ The Municipal Structures Act. (Act 117 of 1998). And Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research Circular.

3.3.3 The Local Government Legislative Framework

The Constitution of South Africa is sovereign and provides the legislative framework for subsequent legislation. It requires government to give effect to local government autonomy. From the enactment of the Constitution until late 2000 a number of fundamental local government Acts were authorised. Some of the key policy documents and Acts with particular relevance to the political powers and functions of local government are summarised in Table 3.3.

Table 3.3: Local Government Legislation Pertaining to Political Decentralisation

<p>The Organised Local Government Act (Act 52 of 1997) Provides for national and provincial organisations representing the different categories of municipalities and the designation of representatives to participate in the National Council of Provinces. It provides for the establishment of the South African Local Government Association and nine provincial local government associations (PLGAs).</p>
<p>The Municipal Demarcation Act (Act 27 of 1998) Provide the criteria and procedures for the determination of municipal boundaries by an independent authority. It establishes and regulates the independent Municipal Demarcation Board. It authorises the Municipal Demarcation Board to establish and/or amend local municipal boundaries conducive to representative and participatory democracy.</p>
<p>The Municipal Structures Act (Act 117 of 1998) (See Appendix 2) Provides for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality. It establishes criteria for determining the category of municipality to be established in an area; and defines the types of municipality that may be established within each category. It provides for an appropriate division of functions and powers between categories of municipality; and regulates the internal systems, structures and office-bearers of municipalities. It provides for the determination of electoral systems.</p>
<p>The Municipal Electoral Act (Act 27 of 2000) Provides for citizens' right to choose their local council through regular, competitive local elections as well as the election procedures for municipal councils, including the requirements for parties and ward candidates to contest the elections as well as general procedures, to regulate municipal elections.</p>
<p>The Municipal Systems Act (Act 32 of 2000) Provides for the establishment of guidelines for community participation in local government decision-making processes.</p>
<p>The Intergovernmental Relations Framework Act (Act 36 of 2005) To establish a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations; provides for mechanisms and procedures to facilitate the settlement of intergovernmental disputes; and provides for matters connected therewith.</p>

While local government legislation was being considered, the municipal boundaries established during the interim phase had to be re-established in accordance with the Constitution and the Municipal Demarcation Act (Act 27 of 1998). The focus of demarcation then extended to creating not only politically inclusive municipalities, but also to making them more financially and administratively viable. The priorities were geographical continuity and coherence, resource sharing, manageable size and functionality.²¹⁴ The objective was to create “truly-bounded municipalities where boundaries correspond with socio-economic activity spaces.”²¹⁵ Municipalities had to be created that integrated both urban and rural settlements. The argument was that all towns had functional links to rural areas, whether culturally or economically. The criticism was that the “[R]ural administrations that were set up during the interim phases were largely political shells without any formal administration.”²¹⁶

By the end of 2000 (in time for the second local government elections) the 834 local authorities were further rationalised into 283.²¹⁷ (See Table 3.4). The new municipal system consists of:²¹⁸

- 6 Category A Municipalities²¹⁹
(or metropolitan areas with 6.6 million voters, 1052 councillors).
- 231 Category B Municipalities
(or local municipalities with 11.7 million voters, 6376 councillors)
- 46 Category C Municipalities
(or district municipalities with 1518 councillors serving them).²²⁰

²¹⁴ Cameron, R. (2006). *Local Government Boundary Reorganisation*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers: Pp. 76-106.

²¹⁵ Cameron, R. (2006). *Local Government Boundary Reorganisation*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. Page 84.

²¹⁶ Cameron, R. (2006). *Local Government Boundary Reorganisation*. In Pillay, U. (Ed.). (2006). Democracy and Delivery: Urban Policy in South Africa. Pretoria: Human Sciences Research Council Publishers. Page 88.

²¹⁷ Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research.

²¹⁸ Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research.

²¹⁹ Metropolitan municipalities are: Johannesburg, Cape Town, Ethekwini (Durban), Tshwane (Pretoria), Nelson Mandela (Port Elizabeth) and Ekurhuleni (East Rand).

Table 3.4: Demarcation of Municipal Boundaries as from 5 December 2000

	Category A	Category C	Category B	
	Metropolitan Councils	District Councils	Local Councils	Cross Boundary local municipalities
South Africa	6	42	223	8
Eastern Cape	-	6	38	-
Free State	-	5	20	-
Gauteng	4	2	7	1 with Mpumalanga 1 with North-West
KwaZulu-Natal	1	9	50	-
Mpumalanga	-	3	17	4 with Northern Province 1 with Gauteng
Northern Cape	-	4	21	2 with North-West
Northern Province	-	4	24	4 with Mpumalanga
North West	-	4	22	2 with Northern Cape 1 with Gauteng
Western Cape	1	5	24	-

Source: Adapted from Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research.

The rationalisation from 843 to 283 municipalities meant that the newly demarcated areas were geographically more expansive, and demographically more populated than emerged from the first demarcation process. It resulted in yet another process of administrative and fiscal reorganisation, as municipal staff and separate administrations, with different financial capacity and resources, were amalgamated into new municipalities.²²¹

In metropolitan areas, the two-tiered system of metropolitan municipalities was removed with the abolishment of Metropolitan Local Councils. Regional Councils and Transitional Local Councils were disbanded and replaced with Category C and B municipalities respectively. However, the structural tension which characterised the relationship between Regional Councils and Transitional Local Councils continued as Category C and B municipalities remain structured as a two-tiered system of local government insofar as Category B

²²⁰ Municipal Demarcation Board. Capacity Assessment Report for 2007/2008. National Report on Local Government Capacity: District and Local Municipalities.

²²¹ Ministerial Advisory Committee on Local Government and Transformation. (2001) Interim Report on the Challenges Facing Local Government.

municipalities share executive and legislative authority with Category C municipalities.²²² In other words, while Category A and C municipalities were devolved autonomous powers and authority, Category B municipalities remain in a two-tiered configuration with Category C municipalities, with the latter having the authority to delegate certain powers and functions to Category B municipalities.²²³

3.4 Intergovernmental Relations and Local Government Autonomy

The Constitution legally enshrines local government as a functional and critical part of a system of cooperative government. It further delineates local government in different categories of municipalities. However, in practice, intergovernmental relations between the national, provincial and local government spheres, as well as among local government categories, illustrate a hierarchical system of governance.

While there is a division of legislative and executive authority within and across the three spheres of government, what is obvious is the absence of direct local government representation at national government level. While the Organised Local Government Act (Act 52 of 1997) theoretically provides for local government to partake in national policy-making, the Constitution stipulates that only ten part-time representatives designated by organised local government “may participate ... but may not vote”²²⁴ in the national legislative process through NCOP. Representation is limited to the South African Local Government Association (SALGA) and the nine Provincial Local Government Associations (PLGAs), thus comprising the ten participants ‘allowed’ to participate at NCOP. The result is that local government is largely absent at national government level. Representation is limited to only one representative of each provincial local government association, headed by a delegate of SALGA, that is ten officials, representing 283 municipalities.

The Intergovernmental Relations Framework Act (Act 13 of 2005) (IRFA) elaborates on the constitutional notion of cooperative governance. Prior to the IRFA, many *ad hoc*

²²² Municipal Demarcation Board. (2000). Municipal Demarcation Board Process and Research.

²²³ Carpenter, G. (1999) *Cooperative Government, Devolution of Powers and Subsidiarity: the South African perspective*. In Seminar Report: Subnational Constitutional Governance. Johannesburg: Konrad Adenauer Stiftung. Pp. 45-53.

²²⁴ Section 67 of the Constitution of South Africa. (Act 108 of 1996).

intergovernmental forums existed.²²⁵ One of the objectives of the IRFA is to formalise a series of intergovernmental forums; however these forums provide for limited local government participation. For example, there is no formal local government representation on the key national intergovernmental bodies such as:

- The President's Coordinating Council (PCC),
- FOSAD (Forum of South African Director-Generals) which comprises National and Provincial Director-Generals,
- the respective Ministerial Forums (such as MinMECs),
- the Financial and Fiscal Commission (FFC),
- nor in the Cabinet Cluster system (comprising ministries and departments in related functional areas as well as provincial director-generals).

According to the policy framework, fostering good intergovernmental relations is part of provinces' obligation to provide local government support. In reality the system of cooperative governance is hierarchical. Although the Constitution enshrines local government as a functional and critical part of a decentralised system of cooperative governance, it seems that in reality local government remains a lesser or subservient sphere of government for a number of reasons.

At a provincial level, The Intergovernmental Relations Framework Act (IRFA) only provides for Category A and Category C municipalities to be represented on Provincial Coordinating Forums (PCFs). Regardless of the fact that such intergovernmental structures meet sporadically or are not particularly effective, the point remains that, in legal terms, Category B municipalities are excluded. Their opportunity for intergovernmental input is mainly in District Intergovernmental Forums (DIGFs). DIGFs delegate one representative to the Provincial Local Government Associations (PLGA) which in turn delegates only one representative to the national government level.

In other words, for Category B municipalities, the only entry point at national policy-making level is through their DIGF representative. However, not all districts are represented and

²²⁵The Department of Provincial and Local Government. (2006). The Implementation of the Intergovernmental Relations Framework Act. An Inaugural Report. 2005-2006. Page 11.

only one district delegate per provincial local government association represents all three categories of municipalities in the South African Local Government Association (SALGA) - an intergovernmental body that has no voting power.

3.5 Ward Committees as Institutions for Public Participation

As discussed in the previous chapter, the literature on political decentralisation often focuses on its contribution to the democratisation of state-society relations. Under apartheid, local government was an extension of a minority-led central government providing no opportunities for popular participation or input into decision-making processes. In post-apartheid South Africa, the Constitution devolves political authority to local government insofar as municipalities must *'provide democratic and accountable government for local communities.'*²²⁶ Whereas apartheid policies prohibited widespread public participation, constitutionally, municipalities now have a legal obligation to *'encourage the involvement of communities and community organisations in the matters of local government.'*²²⁷

The political compromise reached during local government negotiations meant that municipalities had to be divided into municipal wards in order to enable local government elections based on proportional representation as well as on a ward system. The expectation was that wards would enable local public participation and input into the local governance processes.

The literature claims that decentralisation brings government closer to the people, and offers people an opportunity to partake in and inform policy-making. In so doing, the argument goes, municipal authorities understand local needs and can serve their constituencies better, leading to appropriate service delivery.²²⁸ These types of theoretical arguments are widely represented in South African local government legislation. The Municipal Systems Act, for example, defines municipalities as the sphere of government closest to the people, with powers and duties that directly affect the development of local areas and the daily lives of local residents. It charges municipalities with the duty to develop a culture of democratic

²²⁶ Section 152 1 (a) of the Constitution of South Africa. (Act 108 of 1996).

²²⁷ Section 152(e) of the Constitution of South Africa. (Act 108 of 1996).

²²⁸ Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: Johns Hopkins University Press. And Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

municipal governance that complements formal representative government with a system of participatory governance.²²⁹

The Municipal Systems Act instructs local authorities to be responsive to the needs of the local community;²³⁰ to establish clear channels of communication with the local community;²³¹ to inform the local community about the services which they are entitled to receive;²³² and to inform the local community how the municipality is managed, what it spends its money on, and who is in charge.²³³ It regards the formal systems of governance, such as periodic elections, as but one element of local governance, calling on the active participation of citizens in municipal processes. It argues that community participation deepens democracy by giving local citizens a direct say in a range of decisions and processes which affect them, and regards this as integral to the provision of municipal services.²³⁴

Municipalities must create the necessary conditions for greater democratic public involvement in municipal decision-making processes. Besides participation, municipalities must be transparent and make decisions publicly available for comment. Municipalities must create and support formal structures so that residents can participate in local policy-making such as the drafting of integrated development plans, municipal budgeting or other local policy issues.²³⁵

The Municipal Structures Act is more specific and stipulates the powers and functions of municipal office bearers, and the obligation to establish municipal committees to which the public must have access. One such prescription is the establishment of municipal-wide ward committees to act as non-partisan forums for community participation. In Category A and Category B municipalities 50 % of councillors are elected in their respective wards. The remainder of the council comprises councillors elected on a party-list system of proportional representation.²³⁶

²²⁹ Chapter 4 of the Municipal Systems Act. (Act 32 of 2000).

²³⁰ Section 16 of the Municipal Systems Act. (Act 32 of 2000).

²³¹ Section 17 of the Municipal Systems Act. (Act 32 of 2000).

²³² Section 18 of the Municipal Systems Act. (Act 32 of 2000).

²³³ Section 19 of the Municipal Systems Act. (Act 32 of 2000).

²³⁴ Section 16 of the Municipal Systems Act. (Act 32 of 2000).

²³⁵ Section 17 of the Municipal Systems Act. (Act 32 of 2000).

²³⁶ Section 22-23 of The Municipal Structures Act. (Act 117 of 1998).

A ward councillor is responsible for setting up a ward committee (comprising no more than ten people) representing a diversity of interests.²³⁷ The objective of ward committee meetings is to provide a forum for interaction between ward councillor and residents, where information is shared and where matters affecting the ward are discussed.²³⁸ Ward committees, in turn, may make presentations to the local council.²³⁹

Although it is not the objective of this study to assess whether the political decentralisation of local government has created democratic local government, it is relevant insofar as questioning to what extent the political structures and systems such as the ward system at local government level enable public participation. Some studies suggest that forums for public participation, such as ward committees, are not effective channels for community participation in local decision-making.²⁴⁰ The ward system was proposed during the national negotiation period as a way to provide for constituency representation as opposed to a system of proportional representation which favours national political parties. Constituency representation can offset patronage inherent in a system of proportional representation when the national ruling party dominates. However, in the South African context, it appears that ward committees, too, have been usurped by the national party agenda.²⁴¹

Deacon *et al* explored ward committees and their contribution to municipal governance in relation to party politics.²⁴² They questioned whether “ward committees offer an opportunity for the local community to engage, and hold accountable, officials and councillors independently of party agendas, or [whether they are] an innovation dominated by, and even

²³⁷ Section 72 of the Municipal Structures Act. (Act 117 of 1998).

²³⁸ Section 72 of the Municipal Structures Act. (Act 117 of 1998).

²³⁹ Section 74 of the Municipal Structures Act. (Act 117 of 1998).

²⁴⁰ Deacon, R. and Piper, L. (2008). *Party Politics, Elite Accountability and Public Participation: Ward Committee Politics in the Msunduzi Municipality*. In Transformation. Volume 66/67. Pp. 61-82. And Smith, T. (2008). *The Role Of Ward Committees in Enhancing Participatory Local Governance and Development in South Africa*. In Local Government Bulletin. November. Pp. 1-60.

²⁴¹ Deacon, R. and Piper, L. (2008). *Party Politics, Elite Accountability and Public Participation: Ward Committee Politics in the Msunduzi Municipality*. In Transformation. Volume 66/67. Pp. 61-82.

²⁴² Deacon, R. and Piper, L. (2008). *Party Politics, Elite Accountability and Public Participation: Ward Committee Politics in the Msunduzi Municipality*. In Transformation. Volume 66/67. Pp. 61-82.

advancing the interests of, the local party branch?”²⁴³ Their investigation into the operation of ward committees in the Msunduzi municipality (Pietermaritzburg, KwaZulu-Natal) found that functional, ward committees tended to be dominated by party agendas. They found that, in a number of cases, ward committees have become forums for political parties, deepening patterns of patronage as opposed to deepening local democracy; that ward committees “are too politicised to offer an independent source of non-electoral accountability to parties.”²⁴⁴

In such circumstances, ward councillors are, by implication, more accountable to the party as opposed to their local constituencies. The authors find it questionable that ward committees can be truly non-partisan given the dominance of one party (the ANC) in South Africa’s system of representative democracy. (See Appendix 3 on the 2004 and 2009 National Election results).

Alongside patronage, the national Department of Provincial and Local Government (DPLG) argues that despite the existence of a comprehensive institutional framework for public participation in local government, such systems and structures remain ineffective largely because of weak local councillor involvement.²⁴⁵ Accountability is limited, while corruption and nepotism are prevalent - with many municipalities under investigation.²⁴⁶ Common examples cited are accusations of favouritism in procurement processes, abuses of travel allowances, fictitious tenders, non-payment of services by councillors and the use of municipal facilities for party-political or personal purposes.²⁴⁷

My own surveys in 2006 as well as the follow-up surveys in 2009 found that the majority of respondents regarded ward committee meetings as meaningless. Few attended, and those who did thought it was a waste of time. Ward committee meetings were irregular, and some

²⁴³ Deacon, R. and Piper, L. (2008). *Party Politics, Elite Accountability and Public Participation: Ward Committee Politics in the Msunduzi Municipality*. In Transformation. Volume 66/67. Pp. 61-82.

²⁴⁴ Deacon, R. and Piper, L. (2008). *Party Politics, Elite Accountability and Public Participation: Ward Committee Politics in the Msunduzi Municipality*. In Transformation. Volume 66/67. Pp. 61-82.

²⁴⁵ Department of Provincial and Local Government. Annual Report 2007-2008. Page 36.

²⁴⁶ Buhlungu, S. and Atkinson, D. (Eds.). (2007). State of the Nation: South Africa 2007. Pretoria: Human Sciences Research Council Publishers. Pp. 66-67. And Public Service Commission. (2008). Annual Report 2007/08.

²⁴⁷ Buhlungu, S. and Atkinson, D. (Eds.). (2007). State of the Nation: South Africa 2007. Pretoria: Human Sciences Research Council Publishers.

ward councillors did not even attend their own meetings.²⁴⁸ In some instances, issues or problems were screened by the ward committee members first before they would be considered by the ward councillor; hence respondents regarded ward councillors as unapproachable and unwilling to be held accountable. Despite their criticism, every respondent thought that ward committee meetings should be held since this would give them a chance to raise service delivery issues, and give them an opportunity to meet their ward councillor face-to-face.

The politicisation of ward committees in South Africa is but one indicator of an overall system of political patronage. This is amplified, as some argue, by the fact that the ANC has no serious party opposition in any sphere of government, and it has the power and legitimate authority to control and reform the state.²⁴⁹ If so, then political power is not devolved to local government, but rather the central government's political reach has been extended. Despite the legislative provision for devolved local government, formal structures for local participation, such as ward committees, appear to be deconcentrated extensions of the ANC's national party agenda, offering no distinctive opportunity for residents to contribute to the local service delivery agenda.

Conclusion

This chapter has illustrated that in the past two decades local government in South Africa has undergone some remarkable changes. In theory, political decentralisation is no longer racially prescriptive, and politically fragmented institutions have been replaced by a formalised and democratic system of representative local government.

It is apparent from the above that the local government transformation process has been a continuous and lengthy, if not somewhat disjointed, reform process. Local government reforms were a complex and drawn-out process encompassing wide-spread transformation - legislative, politically, geographically, and institutionally.

The replacement of a blatantly racist political system with one that enables universal public

²⁴⁸ See Appendix 4 for the results of the 2006 and 2009 Survey on Access to Basic Services in the Msunduzi Municipality.

²⁴⁹ Smith, T. (2008). *The Role Of Ward Committees in Enhancing Participatory Local Governance and Development in South Africa*. In Local Government Bulletin. November. Pp 1-60. And Suttner, R. (2006). *Party Dominance 'Theory': Of What Value?* In Politikon. Volume 33(3). Pp. 277–297.

participation at local government level is by itself momentous. Officially, local government is the platform for local democracy and public participation. However, as this chapter has shown, while legally positioned to foster local democracy, in reality, current practices illustrate that multiple factors have limited, and continue to limit, the true extent of political local government autonomy.

This chapter has argued that the local government demarcation process was essentially driven by the ANC-led government's political quest to create racially more representative local authorities. While demarcation took place, overarching legislation was drafted aimed at formalising the devolution of powers and functions to local authorities.

This chapter has shown that the formal intergovernmental relations framework marginalises local government, thereby contradicting the constitutional definition of local government as being a *distinctive, interdependent and interrelated sphere of government*. One of the tenets of this study is that the lack of political local government autonomy impacts on the extent of administrative as well as financial local government autonomy.

It has also been argued that Category B municipalities are to all intents and purposes fully excluded from the national decision-making process. Firstly, because of their lack of official representation in national intergovernmental forums at executive level, since Category B municipalities are not represented beyond the district level. The marginalisation of Category B municipalities makes them vulnerable to unwarranted provincial or national government intervention. Decisions on whether provinces or national government should intervene are taken at national executive level – a level, as has been argued earlier, where Category B municipalities are glaringly absent. Secondly, because of the ineffectiveness and independence of ward committees. Even in those municipalities where ward committees do operate successfully, such input is lost, and as Deacon *et al* argue, party agendas dominate.²⁵⁰ Such a configuration, this study will argue, poses a challenge for Category B municipalities as they are at the forefront of current service delivery problems yet they are marginalised at the national policy-making front.

The next chapter will focus on the decentralisation of administrative authority to local

²⁵⁰ Deacon, R. and Piper, L. (2008). *Party Politics, Elite Accountability and Public Participation: Ward Committee Politics in the Msunduzi Municipality*. In Transformation. Volume 66/67. Pp. 61-82.

government. The nature of political decentralisation influences the devolution of administrative powers and authority across the three spheres of government. The chapter will focus more specifically on the administrative obstacles confronting Category B municipalities, and how sharing service delivery responsibilities with Category C municipalities constitute a unique set of intergovernmental complications, thus reiterating some of the structural political weaknesses of local government in the system of intergovernmental relations.

CHAPTER FOUR

ADMINISTRATIVE DECENTRALISATION

Introduction

The previous chapter examined political decentralisation in South Africa by analysing the political configuration of governance. It showed that despite local government being constitutionally entrenched as a separate and autonomous sphere of power, it remains dominated politically by the national executive authority as well as marginalised in national government policy-making processes.

The focus of this chapter is on the distribution of powers and functions between national and sub-national governments which Cohen *et al* consider to be aspects of administrative decentralisation.²⁵¹ In theory, this understanding of administrative decentralisation is evident in the legislative framework in South Africa. The enactment of the Constitution and subsequent local government policies, such as the White Paper on Local Government (1998), the Municipal Structures Act (1998) and the Municipal Systems Act (2000), formalised political decentralisation by determining the regulatory framework for local government, and also provide the foundation for the devolution of powers and functions to local government.

This chapter will commence by identifying the constitutional functions and responsibilities devolved to local government. These are broad, extensive and not specifically defined. The focus of this thesis is on local municipalities' responsibility for service delivery, and more particularly on what is commonly referred to as basic services. This chapter will show that the local government service delivery mandate is extensive. Local governments are not only responsible for providing basic services, but must simultaneously eradicate existing service delivery backlogs.

While all municipalities in South Africa face similar basic service delivery problems, this chapter will also investigate some of the basic service delivery challenges facing Category B

²⁵¹ Cohen, J.M. and Peterson, S.B. (1999). Administrative Decentralization: Strategies for Developing Countries. Sterling: Kumarian Press.

municipalities by exploring the administrative impact of: firstly, demarcation; secondly, the two-tiered local government system; and thirdly, the ongoing uncertainty regarding the assignment of basic service delivery functions between Category B and Category C municipalities.

This chapter is particularly concerned with the division of powers and functions for basic service delivery between Category B and Category C municipalities. It will show that the legislative process undertaken since 1993 has had ongoing administrative implications for Category B municipalities in their efforts to provide basic services. This chapter will argue that most problems originate or are situated in the two-tiered system of local government. There has long been a tense relationship between these two categories of municipalities. This, it will be argued, is made worse by a lack of legislative clarity on the specific powers and functions devolved to each tier of municipality.

The previous chapter demonstrated that the constitutional and legislative configuration of political decentralisation has set the agenda for the allocation of service delivery powers and functions. This chapter re-examines the legislative framework with particular reference to the basic service delivery mandate of local municipalities. One of the contentions of this chapter is that local government's fundamental responsibility for basic service delivery is often compromised by the imperatives of the other spheres of government. For example, while local governments have been devolved the legal authority to plan and execute their own social economic development programmes, as well as structure and manage their own administration,²⁵² in reality autonomous authority for local development planning with regard to basic service delivery is dominated by the national mandate as opposed to one driven by local municipalities themselves.

This chapter briefly considers the allocation of powers and functions to the three spheres of government and highlights the inherent challenges of concurrency. Such concurrency reinforces the argument that there are fundamental limitations to administrative decentralisation and by association, to local government autonomy. This chapter will show that the basic service delivery challenges raise concerns over the extent of local municipalities' autonomy. One of the key arguments here is that the hierarchical nature of

²⁵² Section 152 and 153 of the Constitution of South Africa. (Act 108 of 1996).

political decentralisation is also evident in that the decentralisation of administrative powers and functions to local municipalities are delegated as opposed to devolved.

4.1 Local Government and its Constitutional Mandate

Local government has been assigned substantial administrative autonomy regarding local democratic governance, service delivery and local economic development. The powers and responsibilities of local government are stipulated in the Constitution as follows:

- to provide democratic and accountable government for local communities;²⁵³
- to ensure the provision of services to communities in a sustainable manner;²⁵⁴
- to promote social and economic development;²⁵⁵
- to promote a safe and healthy environment;²⁵⁶ and
- to encourage the involvement of communities and community organisations in the matters of local government.²⁵⁷

In addition to the above, a municipality must:

- structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and promote the social and economic development of the community;²⁵⁸ and
- participate in national and provincial development programmes.²⁵⁹

This study is concerned with local government's second constitutional obligation: to ensure the provision of services to communities in a sustainable manner. The previous chapter highlighted the weaknesses of local democratic governance, and subsequent chapters will illustrate how financial challenges constrain local economic development. The argument here is that the basic service delivery mandate is cumbersome, and made more challenging by ongoing national and provincial control over and delegation of basic service delivery responsibilities to local government.

²⁵³ Section 152 (1) (a) of the Constitution of South Africa. (Act 108 of 1996).

²⁵⁴ Section 152 (1) (b) of the Constitution of South Africa. (Act 108 of 1996).

²⁵⁵ Section 152 (1) (c) of the Constitution of South Africa. (Act 108 of 1996).

²⁵⁶ Section 152 (1) (d) of the Constitution of South Africa. (Act 108 of 1996).

²⁵⁷ Section 152 (1) (e) of the Constitution of South Africa. (Act 108 of 1996).

²⁵⁸ Section 153 (a) of the Constitution of South Africa. (Act 108 of 1996).

²⁵⁹ Section 153 (b) of the Constitution of South Africa. (Act 108 of 1996).

The national mandate of the ANC has always been to provide universal access to a broad range of public services. The Constitution enshrines the right of all citizens to quality socio-economic services. The most encompassing definition of *public* services refers to universal access to housing, water, sanitation, waste management, refuse removal, electricity, education, social welfare, nutrition, and health.²⁶⁰ The responsibility for realising these socio-economic rights is shared across the three spheres of government. These are set out more fully in Schedules 4 and 5 of the Constitution. Schedule 4A sets out the functional areas of concurrent national and provincial legislative competence while Schedule 5A lists the functional areas of exclusive provincial legislative competence. (See Appendixes 5 and 6). Based on these Schedules, municipal services relate to water supply; sewage collection and disposal; refuse removal; electricity and gas supply; municipal health services; municipal roads and storm water drainage; street lighting; and municipal parks and recreation.

The Constitution recognises that municipalities may not have the resources necessary to fulfil each of these rights immediately. In this respect “[A] municipality must strive, within its financial and administrative capacity, to achieve the objects set out.”²⁶¹ The primary obligation is to take reasonable legislative and other measures, based on the resources available, in order to achieve the progressive realisation of each of these rights.²⁶²

4.2 Defining Basic Services

In a context where resources and capacity are limited, the question remains as to which services to prioritise - in other words, which services are regarded as *basic services*. The sheer size of unequal development during apartheid and the denial of the majority of South Africans to public services make any delineation of what constitutes a lifeline service difficult. The Financial and Fiscal Commission (FFC) regards all the local government functions spelt out in Schedule 4B as a core bundle of basic municipal services. The White Paper on Local Government (1998) offers no clarity either, and refers to basic services as those services that enhance the quality of life of citizens, and increase their social and

²⁶⁰ The Bill of Rights of the Constitution of South Africa. (Act 108 of 1996).

²⁶¹ Section 152 2 of the Constitution of South Africa. (Act 108 of 1996).

²⁶² Section 27(2) of the Constitution of South Africa. (Act 108 of 1996).

economic opportunities by promoting health and safety, facilitating access (to work, to education, to recreation) and stimulating productive activities.²⁶³

In 1994, the ANC introduced its Reconstruction and Development Programme (RDP) as South Africa's socio-economic policy framework. The RDP was a culmination of negotiations between the ANC and its Alliances partners (comprising the Congress of South African Trade Unions and the South African Communist Party). The main vision of the RDP was to alleviate poverty and address the massive backlogs in social service delivery. *Meeting Basic Needs* was identified as one of the key objectives of the RDP. This is interpreted as

*job creation, land reform, housing, services, water and sanitation, energy, telecommunications, transport, the environment, nutrition, health care, social security and social welfare.*²⁶⁴

A lack of resources made it necessary to determine a minimum threshold. The RDP identified water and sanitation as the fundamental basic service delivery obligations of local government in respect of poor households. But even then, existing resources would not suffice and basic services were capped at certain minimum levels.

4.2.1 Basic Water

The Water Services Act (Act 108 of 1997) describes basic water supply as the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene.²⁶⁵ Two levels have been defined by the Department of Water Affairs and Forestry (DWAFF):²⁶⁶

At RDP level: The infrastructure necessary to supply 25 litres of potable water per person per day within 200 metres of a household and with a minimum flow of 10 litres per minute (in the case of communal water points) or 6000 litres of potable water supplied per formal connection per month (in the case of yard or house connections).

²⁶³ Section 92 of the Reconstruction and Development Programme. (1994).

²⁶⁴ Section 1.4.3 of the Reconstruction and Development Programme. (1994).

²⁶⁵ Section 1 of the Water Services Act. (Act 108 of 1997).

²⁶⁶ White Paper on Water Supply and Sanitation Policy. (1994).

Below RDP: A household has access to infrastructure such as a standpipe more than 200 metres from a household. Or no infrastructure when households rely on water from a dam, spring, river or trucking projects. The absence of infrastructure at or below RDP level constitutes a water service delivery backlog.

4.2.2 Basic Sanitation

The quality and quantity of what constitutes basic sanitation is not as clearly defined. It refers to a minimum acceptable basic level of sanitation defined as a system for disposing of human excreta, household waste water and refuse, which is acceptable and affordable to the users; is safe, hygienic and easily accessible; and which does not have an unacceptable impact on the environment.²⁶⁷ (See Appendix 7 for a List of Basic Sanitation Alternatives). The most common basic form of sanitation ‘at RDP level’ is identified as Ventilated Pit Latrines (VIPs).

4.2.3 Basic Electricity

In 2003, electricity was officially added as a basic service and delegated to local government.²⁶⁸

At RDP Level: 50kWh of grid electricity per month to all households or, alternatively, with non-grid electricity²⁶⁹

Below RDP Level: Households that relied on wood and candles as sources of cooking and lighting.

As such, water, sanitation and electricity were identified as the three fundamental basic services which all South Africans should have immediate access to. This meant that local government was the primary sphere of government responsible for the provision of the national service delivery mandate since the provision of these basic services are functions exclusively assigned to local government.

²⁶⁷ White Paper on Water Supply and Sanitation Policy. (1994). And Department of Water Affairs and Forestry. (2002). Sanitation for a Healthy Nation.

²⁶⁸ Section 2.2 of the Electricity Basic Services Support Tariff Policy Framework (2003).

²⁶⁹ Non-grid electricity includes energy supplies such as Solar Home Systems. Electricity Basic Services Support Tariff Policy Framework (2003).

4.3 Eradicating the Service Delivery Backlog

The eradication of basic service delivery backlogs has and continues to be a fundamental function and responsibility of local government.²⁷⁰ The Constitution of South Africa entrenches local government as *the* sphere of government responsible for basic service delivery. Yet, it has been repeatedly reported that local authorities lack expertise, capacity and resources. This is made worse by their apartheid inherited service delivery backlogs.²⁷¹

The vast lack of adequate and quality service delivery during apartheid has left the newly amalgamated, inexperienced and ill-equipped local authorities with a daunting and challenging mandate. The national mandate since 1994 has been to alleviate apartheid-created backlogs. Table 4.1 summarises the basic service delivery backlogs in South Africa as inherited by the ANC-led national government in 1994.

Table 4.1: Basic Service Delivery Backlogs in South Africa 1994

Water backlogs

- 25% of South Africans do not have access to potable/piped water.
- 40% access to water to their homes.
- 17.5% of all African households have access to piped water in their homes.
- 33% have to fetch water from other sources, such as rivers, streams, dams, springs or boreholes.
- 7.7% of African households in rural areas have piped water in their homes.
- 40% of African households in metropolitan areas have piped water in their homes.
- Over 99% of all white and Indian households have access to water in their homes.

Energy backlogs

- 45% of all households in South Africa do not have access to grid electricity.
- 75% of African households in rural areas are not connected to the national grid.
- Households rely largely on fuel wood stocks.

²⁷⁰ Mirjam, V.D., Swilling, M., Pieterse, E. and Parnell, S. (Eds.). (2008). Consolidating Developmental Local Government: Lessons from the South African Experience. Cape Town: University of Cape Town Press.

²⁷¹ Adapted from Deegan, H. The Politics of the New South Africa: Apartheid and After. Cape Town: Prentice Hall. 2001. Pp.116-117.

Continued: Table 4.1: Basic Service Delivery Backlogs in South Africa 1994

Sanitation backlogs

- 50% of all households in South Africa have flush toilets:
 - Nearly all white and Indian households have flush toilets.
 - 88% of coloured households have toilets.
 - 34% of African households have flush toilets.
 - 41% of African households have pit latrines.
 - 6.5% of African households have bucket toilets.
 - 16% of African households have no form of toilet.

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Source: Adapted from Deegan, H. (2001). *The Politics of the New South Africa: Apartheid and After*. Cape Town: Prentice Hall: Pp. 116-117.

Under the new democratic dispensation, local government is at the forefront of undoing apartheid-created backlogs. Since 1996, local government has had considerable success in expanding access to basic services to households. Figure 4.1 illustrates that access to water ‘at RDP level’ has increased from 62.4% in 1996 to 91.8% in 2008.

Figure 4.1: Households with Access to Basic Water

Source: Adapted from The Presidency. (2009). *Development Indicators*. Page 31.

Figure 4.2 illustrates that access to sanitation ‘at RDP level’ has increased from 51.6% in 1996 to 77.1% in 2008. And Figure 4.3 shows that access to electricity has increased from 54.1% in 1996 to 73 % in 2008.

Figure 4.2: Households with Access to Basic Sanitation

Source: Adapted from The Presidency. (2009). Development Indicators. Page 32.

Figure 4.3: Households with Access to Basic Electricity

Source: Adapted from The Presidency. (2009). Development Indicators. Page 32.

The figures above all indicate a steady increase in the eradication of basic service delivery backlogs. However, later chapters will show that the remaining backlogs are problematic for municipalities.

4.4 Category B Municipalities and Basic Service Delivery Challenges

The data available on service delivery backlogs do not distinguish between the three different categories of municipalities. However, the SACities Network claims that Category B municipalities are particularly faced with the dual challenge of extending service delivery into rural outlying areas as well as upgrading informal settlements by providing basic services ‘at RDP level’.²⁷² The administrative decentralisation of the basic service delivery mandate to local government has affected Category B municipalities more significantly than any other category of municipality or sphere of government. There are three key challenges. Firstly, the establishment of wall-to-wall municipalities in terms of the demarcation process resulted in the creation of large Category B municipalities, including vast tracts of undeveloped and highly populated land. While Category A municipal boundaries also increased, their land was more developed with some basic infrastructure in place.²⁷³ Secondly, the two-tiered configuration of local government positioned Category B (or local) municipalities in a hierarchically subservient relationship with the upper Category C (or district) municipalities. And thirdly, perhaps what is most complex and challenging for local municipalities is the ongoing assignment and reassignment of basic service delivery functions between Category B and C municipalities. Each will be discussed below.

4.4.1 Amalgamation, Size and Jurisdiction

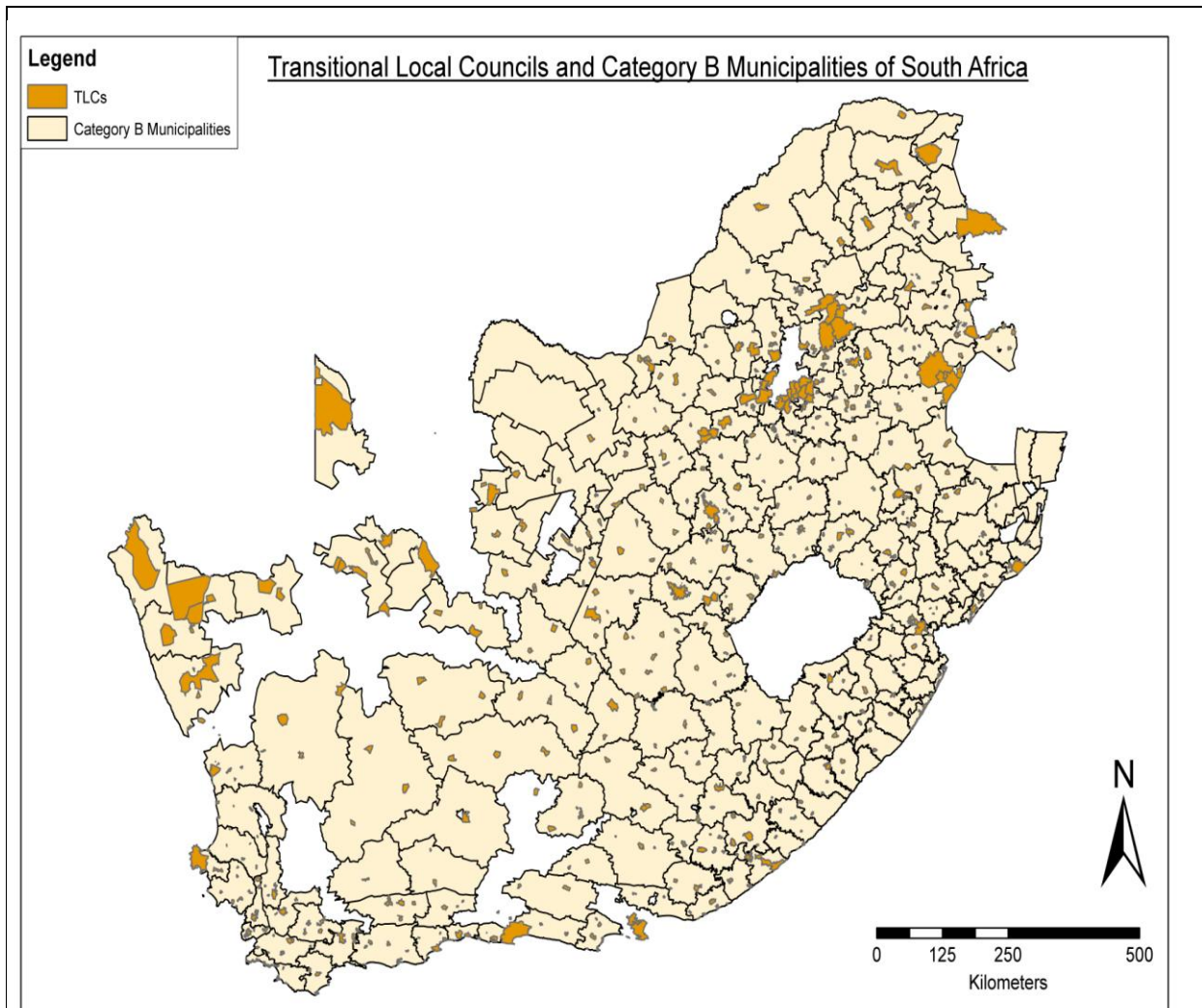
As the previous chapter highlighted, the restructuring of local government has since the early 1990s been a continuous feature in South Africa’s changing political landscape. One of the objectives of the demarcation process was to create wall-to-wall municipalities by integrating and removing the urban-rural divide, and by including areas which were previously part of homelands, self-governing territories or townships. The (re)demarcation of Transitional Local Councils (TLCs) into Category B municipalities meant that many local municipal boundaries expanded vastly in geographical area. Map 4.1 illustrates the boundaries of the

²⁷² SACities Network. (2007) State of Cities Finances Report.

²⁷³ SACities Network. (2007). State of Cities Finances Report.

TLCs prior to the 2000 demarcation process. These boundaries were rationalised into much larger Category B municipalities.

Map 4.1: Transitional Local Councils and Category B Municipalities



TLC
Boundaries finalised in December 1995.

Category B municipalities
Boundaries finalised in December 2000.

Source: Gijbsbertsen, B. (2009). Department of Geography. University of KwaZulu-Natal.

The demarcation process in South Africa resulted in three separate administrative reorganisation processes; the first prior to the first local government elections (in 1995 which created 1280 municipalities); followed by the second period between the first and second local government elections (1995-2000 which created 843 municipalities); and finally the third demarcation process ending in 2000, creating 283 municipalities.

Each local municipal amalgamation process resulted in widespread administrative changes such as the reallocation of resources, including the transfer of staff, assets and liabilities, as well as the alignment of administrative management processes among and within the different categories of municipalities.²⁷⁴ The process of amalgamating these administrations generated many problems. For example, each local authority had its own municipal practices and by-laws. Different management styles and organisational structures were merged into one. Rationalisation and policy alignment became daunting tasks for the newly constituted municipalities. Wages, salaries and conditions of service had to be standardised.²⁷⁵ Tensions arose between politically inexperienced councillors and municipal officials who had served under the previous political dispensation, and had the practical know-how.²⁷⁶ In some cases, municipalities experienced a loss of productivity due to low staff morale resulting from the uncertainty of the amalgamation and restructuring process.²⁷⁷

Newly established local municipalities were not only faced by internal administrative reorganisation, but also by the extension of municipal boundaries which instantly increased the size of local authorities, including many largely illiterate and poor inhabitants. Many newly created local municipalities continue to face the numerous administrative and financial problems emanating from the demarcation and amalgamation process, and continue to struggle to staff their local authorities with skilled personnel.²⁷⁸

The Constitution only provides for broad local government responsibilities. As a result, municipalities were predominantly left to manage and restructure their newly configured administrations on their own accord. This was made more complex in the absence of specific local government powers and functions since these were yet to be fully defined for the three categories of metropolitan, district, and local councils.

²⁷⁴ Centre for Development and Enterprise. (2003). *Roundtable*. Number 7.

²⁷⁵ Centre for Development and Enterprise. (2003). *Roundtable*. Number 7. And Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

²⁷⁶ MacKenzie, K. (2005). *Do Municipal Managers Have What It Takes?* In SADelivery. Issue 6. Page 35.

²⁷⁷ Boraine, A. (1998). *Administration at Local Level*. In Development Southern Africa. Volume 15 (2). Page 293.

²⁷⁸ Centre for Development and Enterprise. (2003). *Roundtable*. Number 7.

4.4.2 The Two-Tiered Configuration Between Category B and Category C Municipalities

The creation of Category B (local municipalities) and Category C (district municipalities) as a two-tiered system of local government has been problematic since its inception. Just as with Category A (metropolitan municipalities), local municipalities are also governed by a single council. However, they do not possess autonomous powers and each local municipality falls under the jurisdiction of a district municipality.²⁷⁹ This makes local municipalities a tier of district municipalities, which is not autonomous from district municipalities. This is because of the hierarchical nature of the system. The critique is that local municipalities have more capacity and are more competent compared to their 'ruling' district municipality. Many studies have reported on the disjointed and often contentious relationships between local municipalities and their district councils.²⁸⁰ District municipalities are legislatively responsible for monitoring, regulating and supervising the activities of the local councils in their areas of jurisdiction. Compared to the district councils, local councils are economically and financially stronger. They have more capacity, expertise and resources, but in a two-tiered configuration they find themselves subservient to the authority of the district council.²⁸¹

Another underlying tension between local and district municipalities is partially informed by the history of underperforming regional and district councils. At the time when Black Local Authorities were struggling to provide basic services, the apartheid government established Regional Service Councils (RSCs) and Joint Services Boards (JSBs) in an attempt to extract revenue from businesses for these cash-strapped administrations.²⁸² In KwaZulu-Natal, for example, Regional Councils replaced the old RSCs and JSB structures. However, the interim Constitution (1993) and the Local Government Transition Act (1993) did not provide clear

²⁷⁹ Section 155 (1)(b) of the Constitution of South Africa. (Act 108 of 1996).

²⁸⁰ Ministerial Advisory Committee on Local Government and Transformation. (2001) Interim Report on the Challenges Facing Local Government. And The Portfolio Committee for Provincial and Local Government (2003). Report on Study Tour of Municipalities. And Steytler, N. Baatjies, R. And Fessha, Y. (2007). *Where to Now with District Municipalities?* In Local Government Bulletin (2007). Volume 9(3) Pp. 7-8.

²⁸¹ Steytler, N. Baatjies, R. and Fessha, Y. (2007). *Where to Now with District Municipalities?*(2007) In Local Government Bulletin Volume 9 (3) Pp. 7-8.

²⁸² Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

powers for the interim Regional Councils, leaving provinces to allocate powers and functions. Hence, Regional Council structures continued the roles served by the old RSCs and JSBs. Provinces primarily oversaw the provision of bulk services in the newly established regional council areas.²⁸³

With the passing of the Constitution (1996), the White Paper on Local Government (1998) and the Municipal Structures Act (1998), the RSC and JSB structures were officially replaced by district municipalities. These were tasked with the responsibility of being development agents, with a strong redistributive function, which was particularly to support the development of the new local government structures in the rural areas and small towns, but have never quite succeeded in meeting such expectations.²⁸⁴ The thinking was that local municipalities would generate sufficient service delivery surpluses which could cross-subsidise the district municipalities' service delivery costs in rural areas.²⁸⁵

The decision to officially establish a two-tiered local government system means that - structurally - local municipalities have no legislative or executive autonomy. While district municipalities preside over local municipalities, they lack the resources and expertise to contribute to service delivery, often relying on the local municipalities in their jurisdiction to assist the district with delivering basic services into other areas of the district.²⁸⁶

Such a configuration has ramifications for basic service delivery insofar as the general lack of capacity at district municipality level means that in reality local municipalities are the primary service providers, although legally this authority resides with the districts. This will be explored in more detail in the chapter on cost recovery where the financial implications of the two-tiered system are analysed.

²⁸³ Mettler, J. (2000). Provincial-Municipal Relations. Community Law Centre, University of the Western Cape. And Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

²⁸⁴ Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

²⁸⁵ Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

²⁸⁶ Ministerial Advisory Committee on Local Government and Transformation. (2001). Interim Report on the Challenges Facing Local Government.

4.4.3 Uncertainty over the Assignment of Basic Service Delivery Responsibilities

The allocation of the Schedule 4B and 5B local government powers and functions between Category B and Category C municipalities remains unresolved and is shared hierarchically within this two-tiered local government system. Category A (or metropolitan) municipalities are governed by a single council with autonomous executive and legislative authority. Whereas metropolitan municipalities are assigned authority over all the local government functions, the Constitution allows for asymmetrical as well as differentiated allocations of powers and functions between Category B and C municipalities.

*A division of powers and functions between a Category B municipality and a Category C municipality may differ from the division of powers and functions between another Category B municipality and that Category C municipality.*²⁸⁷

While this flexibility has advantages in that it allows for assignments based on the diverse capacities of municipalities, it can also result in the ongoing adjustments of powers and functions between these two municipal categories. To date, the adjustments have had significantly negative implications for Category B municipalities. This has become particularly evident with the amendment to the Municipal Structures Act (1998).

The Municipal Structures Act (1998) was the first official policy document aimed at clarifying the functional tasks of local government listed in Schedule 4B and Schedule 5B of the Constitution. In some respects, it succeeded. It clarified the internal administrative structures and processes of municipalities, together with the composition and responsibilities of political office bearers. It defined municipalities as local administrative institutions consisting of political and administrative structures, which are responsible for the people who live in a local area. It devolved authority to municipalities to elect office-bearers such as the election of a speaker, an executive mayor, a deputy executive mayor, a mayor or a deputy mayor. They, in turn, must appoint a municipal manager who heads the administration, and is the accounting officer for the municipality. Municipalities have the authority to hire and fire

²⁸⁷ Section 155(3)(c) of the Constitution of South Africa. (Act 108 of 1996).

local staff, thereby making local officials accountable to elected local councillors, without the need for approval by other levels of government.²⁸⁸

The Municipal Structures Act allocated the basic service delivery functions to Category B municipalities, while Category C municipalities were responsible for broader development planning. The original Section 83(3) of the Municipal Structures Act (1998) defined the core function of district municipalities to ensure basic service delivery through:

*the integrated sustainable and equitable social and economic development of its area as a whole by inter alia, ensuring integrated development planning ... promoting bulk infrastructural development ... building the capacity of local municipalities to perform their functions and powers ... and [promoting] the equitable distribution of resources between the local municipalities.*²⁸⁹

As such, district municipalities were regarded as responsible for coordinating, overseeing and supporting the delivery of basic services of the local municipalities within their jurisdiction.

However, in 2000 the Municipal Structures Amendment Act (hereafter referred to as the Amendment Act) was promulgated, adjusting the allocation of powers and functions between local municipalities and district municipalities. The Amendment Act transfers control over fundamental local government powers and functions from local municipalities to district municipalities.²⁹⁰ Of significant concern for local municipalities is that all three basic services - water, sanitation and electricity – have been transferred from local to district municipalities.²⁹¹

The Amendment Act was met with widespread criticism right from the start. Some argued that the Amendment Act is illegal insofar as it contradicts local government legislation.²⁹² In the absence of a local government Act, the White Paper on Local Government and the Constitution remain the primary legislative framework for local government policy. Those

²⁸⁸ Schedule 3 of the Municipal Structures Act. (Act 117 of 1998)

²⁸⁹ Section 83(3) of the Municipal Structures Act. (Act 117 of 1998)

²⁹⁰ See Appendix 9 for extracts of the Municipal Structures Amendment Act. (2000)

²⁹¹ Section 84 of the Municipal Structures Amendment Act. (2000).

²⁹² Ministerial Advisory Committee on Local Government and Transformation. (2001) Interim Report on the Challenges Facing Local Government.

opposed to the Amendment Act (such as the National Treasury and the Financial and Fiscal Commission) claim that it is contradictory to Sections 155 and 229 of the Constitution, as well as the White Paper on Local Government, because both these policy documents limit district municipalities as the tier of local government to being responsible for *strategic oversight* as opposed to *direct* service delivery.²⁹³ It states that the primary purpose of district municipalities is to render district-wide coordinating functions, and offer administrative assistance to those local municipalities which lack the necessary capacity: their brief is not to deliver services.

Whereas the Municipal Structures Act of 1998 states that a district municipality is *responsible* for the bulk delivery of municipal services for the area as a whole, the Municipal Structures Amendment Act (2000) vests the actual *provision* as well as *distribution* of water, electricity, sanitation and waste, and municipal health services in the district municipalities directly – thus making district municipalities service providers. The change is in the district municipalities’ authority to supply bulk water and electricity in the area of the district municipality as a whole, as opposed to the 1998 Municipal Structures Act which delegated this function to district municipalities where local municipalities did *not* have the capacity to do so. In essence this signals a reversal of powers and functions by reassigning the provision of all three basic services from Category B to Category C municipalities.

Table 4.2 lists all the functions that are currently assigned to the respective municipalities and highlights those services which the Amendment Act transferred from Category B to Category C municipalities. It is clear that the Amendment Act has vested authority for the delivery of all three basic services in Category C municipalities.

²⁹³ National Treasury. (2003). Intergovernmental Fiscal Review 2003/04. And Financial and Fiscal Commission. (2005). Submission for the Division of Revenue 2005/2006.

Table 4.2: Reallocation of Functions Between District Municipalities and Local Municipalities

FUNCTION	Schedule	Section 84(1) District Municipality	Section 84 (2) Local Municipality
Air pollution	4B		X
Billboards	5B		X
Building regulations	4B		X
Cemeteries, funeral parlours and crematoria	5B	x	X
Child care facilities	4B		X
Cleansing	5B		X
Control of public nuisances	5B		X
Control of undertakings that sell liquor	5B		X
Electricity and gas reticulation	4B	x	used to be
Facilities for the accommodation, care and burial of animals	5B		X
Fencing and fences	5B		X
Firefighting	4B	x	used to be
Licensing and control of undertakings that sell food to the public	5B		X
Licensing of dogs	5B		X
Local amenities	5B		X
Local sports facilities	5B		X
Local tourism	4B	x	X
Markets	5B	x	X
Municipal public transport	4B	x	X
Municipal abattoirs	5B	x	X
Municipal airports	4B	x	used to be
Municipal health	4B	x	used to be
Municipal parks and recreation	5B		X
Municipal planning	4B	x	X
Municipal roads	5B	x	X
Noise pollution	5B		X
Pontoons and ferries	4B	x	X
Pounds	5B		X
Public spaces	5B		X
Public works	4B	x	X
Refuse removal, refuse dumps & solid waste	4B	x	used to be
Sanitation	4B	x	used to be
Stormwater management	4B	x	X
Street lighting	5B		X
Street trading	5B		X
Trading regulations	4B		X
Traffic and parking	5B	x	X
Water and sanitation services	4B	x	used to be

Source: Adapted Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

According to the Amendment Act, district municipalities are the primary service providers for bulk water and electricity, and may delegate these functions to local municipalities on an agency basis until such capacity is gained by the district municipality in question, whereas the 1998 Act delegated the provision of bulk water and electricity to local municipalities where capacity existed, and to a district municipality if its local municipalities did not have the capacity.

The Amendment Act has left local municipalities with significantly less power and autonomy. On the fiscal front, for example, Section 84 of the Amendment Act transfers the authority to impose and collect taxes, levies, as well as duties in relation to these functions, to district municipalities. District municipalities have the authority to receive, allocate, and distribute local revenue. The National Treasury warned that the Amendment Act would result in

*an ad hoc devolution of powers which would lead to confusion, inconsistencies and weak accountability.*²⁹⁴

This proved to be right. The national Portfolio Committee for Provincial and Local Government reported that in some instances a local municipality would carry out a district service function without any formal authorisation or proper financial reporting processes. The Portfolio committee found that district municipalities would reflect in their budgets that they had provided the service, while in reality a local municipality has done so - with the financial costs being reflected in both budgets.²⁹⁵

4.5 Administrative Decentralisation and National Executive Authority

The passing of the Amendment Act raises a number of questions with regard to the central government's impact on local government autonomy. The Amendment Act was driven by

²⁹⁴ Momoniat, I. (Deputy Director-General: National Treasury). (2001). Submission to the Ministerial Advisory Committee on Local Government and Transformation. (2001) Interim Report on the Challenges Facing Local Government.

²⁹⁵ Portfolio Committee for Provincial and Local Government (2003). Report on Study Tour of Municipalities.

the Minister of Provincial and Local Government in the national government.²⁹⁶ Many viewed the reassignment of powers and functions from local municipalities to district municipalities as a unilateral exercise of central power. Some of South Africa's most fundamental and significant policymaking structures such as the National Treasury; the Financial Fiscal Commission (FFC); the South African Local Government Association (SALGA); the Ministerial Advisory Committee on Local Government and Transformation; the national Portfolio Committee on Provincial and Local Government and the national government Select Committee for Local Government and Administration of the National Council of Provinces, all claimed that the Amendment Act lacked consultation. The criticism was also that it went against the intent of the Constitution with regard to when national government intervention was justified or not.²⁹⁷

According to the Constitution, the legislative authority of national government to intervene in local government matters is limited to cases where the sub-national units of government are incapable of providing the devolved function. Only then does the national government have the executive authority to assign to a municipality the administration of a matter listed as provincial functional areas (Schedules 4A and 5B) if –

- (a) *that matter would most effectively be administered locally; and*
- (b) *the municipality has the capacity to administer it.*²⁹⁸

As such, the principle of subsidiarity is embedded in the Constitution insofar as it recommends that powers and functions should be assigned to the sphere of government closest to the point of delivery. This means that local municipalities should be the primary basic service providers *unless* they do not have the capacity to do so. The Amendment Act is also illustrative of a tightening of central control insofar as it decreases the provinces' authority to oversee the assignment of local government functions between Category B and Category C municipalities. According to the Amendment Act, the provincial MEC for local government may now only adjust the divisions of powers and functions between a district and a local municipality if the latter lacks the capacity to exercise its functional powers *only* with regard to solid waste disposal sites, municipal roads, the regulation of passenger transport,

²⁹⁶ The Financial and Fiscal Commission. (2001). Division of Municipal Powers and Functions between District and Local Municipalities. Submission made to the Department of Provincial and Local Government. July 2001.

²⁹⁷ Ministerial Advisory Committee on Local Government and Transformation. (2001) Interim Report on the Challenges Facing Local Government.

²⁹⁸ Section 156(4) of the Constitution of South Africa. (Act 108 of 1996).

municipal airports, fire fighting service, fresh produce markets, cemeteries, local tourism and municipal works.²⁹⁹ In other words, provinces no longer have the authority to assign the functional powers of water, sanitation and electricity. This authority has been transferred to the national government.³⁰⁰ Some claimed that the motivations are political; that is, to limit the powers of Premiers or provincial MECs in provinces which were at the time not under ANC control.³⁰¹ The inference can therefore be made that central control is being extended. In November 2000 the Minister of Provincial and Local Government partially reversed the amendments by authorising all local municipalities to continue to provide bulk services for an unspecified period of time until districts had the capacity to do so.³⁰² The realisation was that it would not be practically possible to transfer these basic service delivery functions and powers in time for the December 2000 elections.³⁰³ It seems that this is still the case for many district municipalities.³⁰⁴

The Portfolio Committee for Provincial and Local Government reported that many municipalities felt that:

*[T]he process of finalizing the division [has taken] too long and has not been consultative enough...both district and local municipalities raised the need to provide greater certainty and clarity on what precisely the new division of powers and functions are, what their technical meanings are, and what the financial implications of these new allocations are...and how these overlap with and are distinct from...*³⁰⁵

The current approach is an annual (re)assessment of the allocation of powers and functions between district and local municipalities. This is managed by the Demarcation Board.³⁰⁶ Municipalities must annually complete a self-administered capacity-assessment template

²⁹⁹ Section 6 of the Municipal Structures Amendment Act. (2000).

³⁰⁰ The Financial and Fiscal Commission. (2001). Division of Municipal Powers and Functions between District and Local Municipalities. Submission made to the Department of Provincial and Local Government.

³⁰¹ Portfolio Committee for Provincial and Local Government (2003). Report on Study Tour of Municipalities.

³⁰² Mufumadi, S. (2000). Minister's Authorisations to Category B Municipalities for Water, Sanitation, Electricity and Municipal Health in terms of the Municipal Structures Act (As Amended).

³⁰³ Mufumadi, S. (2000). Minister's Authorisations to Category B Municipalities for Water, Sanitation, Electricity and Municipal Health in terms of the Municipal Structures Act (As Amended).

³⁰⁴ Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa.

³⁰⁵ Portfolio Committee for Provincial and Local Government (2003). Report on Study Tour of Municipalities.

³⁰⁶ Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

which - at a quick glance - is rather rudimentary. (See Table 4.3). Each municipality is expected to complete this assessment with regard to the functions assigned by the Amendment Act. Capacity is determined by four criteria and their permutations:

- Whether the municipality already performs the function - Yes or No
- Whether the municipality has a budget for performing the function - Yes or No
- Whether the municipality had the necessary staff to perform the function - Yes or No
- Whether the municipality has the infrastructure to perform the function - Yes or No

Sixteen options are possible as depicted in Table 4.3. Each option reflects a different permutation of the four criteria, informing the Demarcation Board on whether the district municipality in question should perform the function.³⁰⁷

Table 4.3: Determining District Municipality Capacity

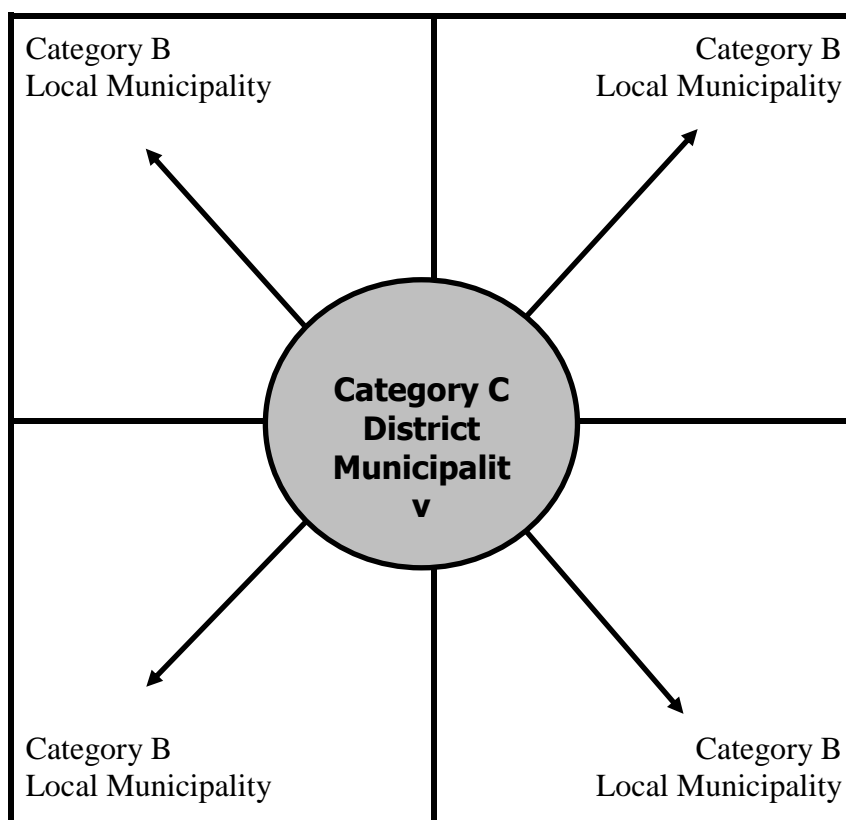
Option	Currently performing function?	Has Budget	Has Staff	Has Infrastructure	Capacity Assessment
1	Yes	Yes	Yes	Yes	Yes
2	Yes	Yes	Yes	No	Yes
3	Yes	Yes	No	No	No
4	Yes	Yes	No	Yes	Yes
5	Yes	No	Yes	Yes	Yes
6	Yes	No	No	Yes	No
7	No	Yes	Yes	Yes	Yes
8	No	No	Yes	Yes	No
9	No	No	No	Yes	No
10	No	Yes	Yes	No	Yes
11	No	Yes	No	Yes	No
12	No	No	No	No	No
13	Yes	No	No	No	No
14	Yes	No	Yes	No	No
15	No	Yes	No	No	No
16	No	No	Yes	No	No

In addition to the capacity-assessment process, the Demarcation Board identifies four possible service delivery arrangements. The current arrangement is Figure 4.4; which is promulgated as the default arrangement, according to the Municipal Structures Amendment Act. Where the district municipality only has limited capacity, then Figure 4.5 represents the

³⁰⁷ Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

arrangement where some local municipalities provide services on behalf of the district municipality on an agency basis. Figure 4.6 represents the scenario where the district municipalities have no capacity at all to deliver basic services; where possible, local municipalities provide these on behalf of the district municipality, or even in other local municipalities. Figure 4.7 depicts a circumstance when a provincial government takes over service delivery functions when either the district municipality or the local municipalities within the district's jurisdiction lack capacity. The situations depicted in Figures 4.5, 4.6 and 4.7 are regarded as temporary arrangements until the district has gained adequate capacity. This will be determined annually based on the capacity assessment template.³⁰⁸

Figure 4.4: District Retains Functions for All Local Municipalities



³⁰⁸ Mlokoti, V. (Chairperson of the Municipal Demarcation Board) Redetermination of Municipal Boundaries. Press Statement. 24 July 2008.

Figure 4.5: District Retains Functions for Some Local Municipalities

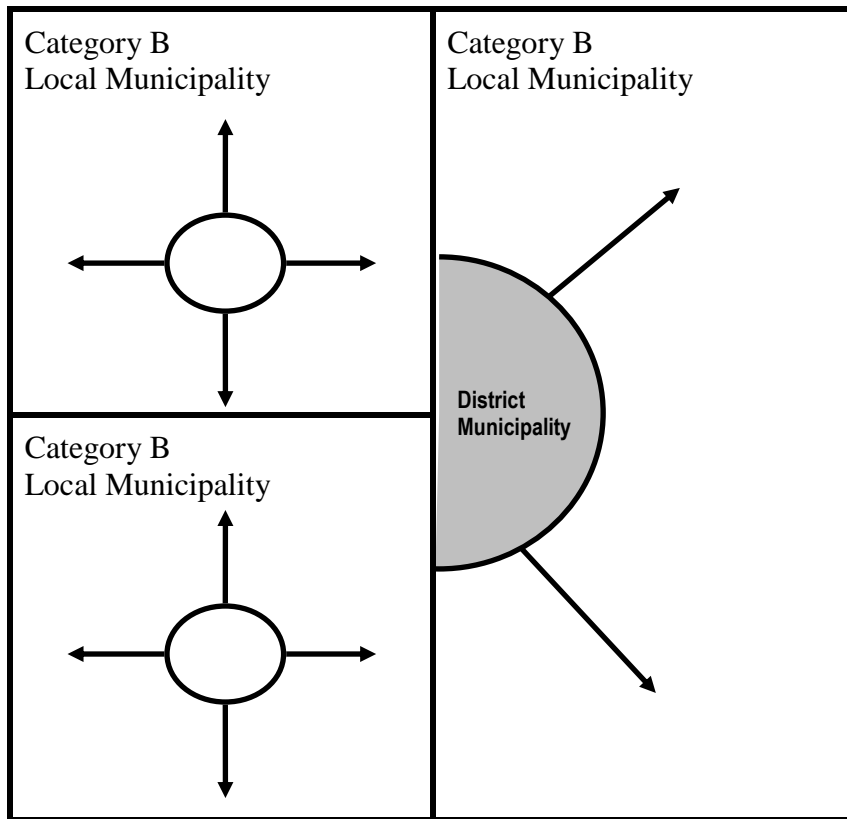


Figure 4.6: District Functions Assigned to All Local Municipalities

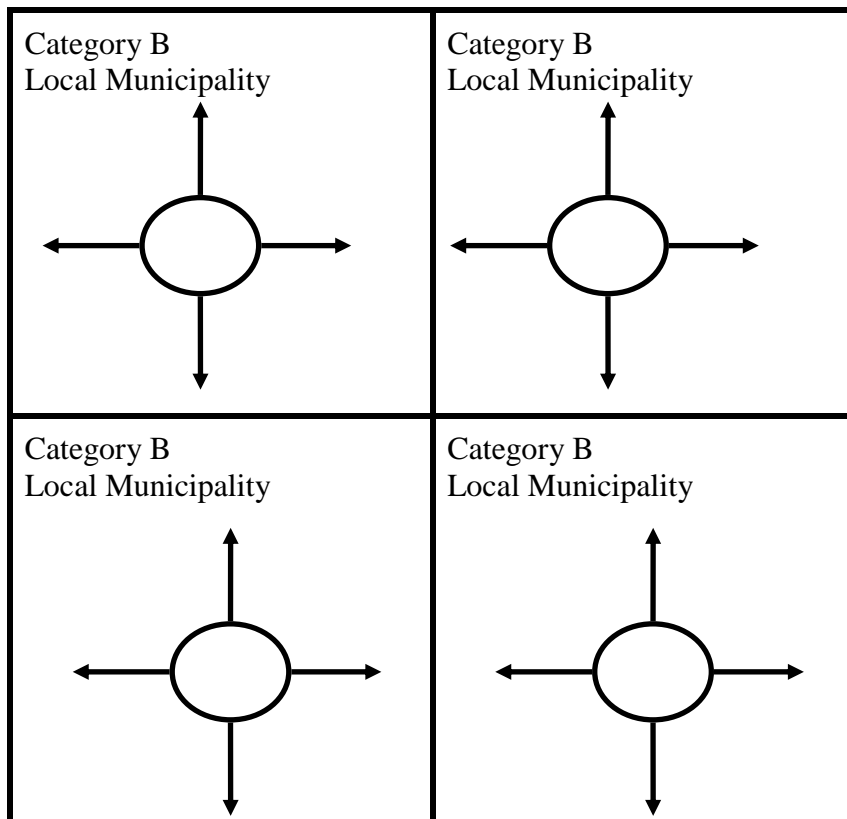
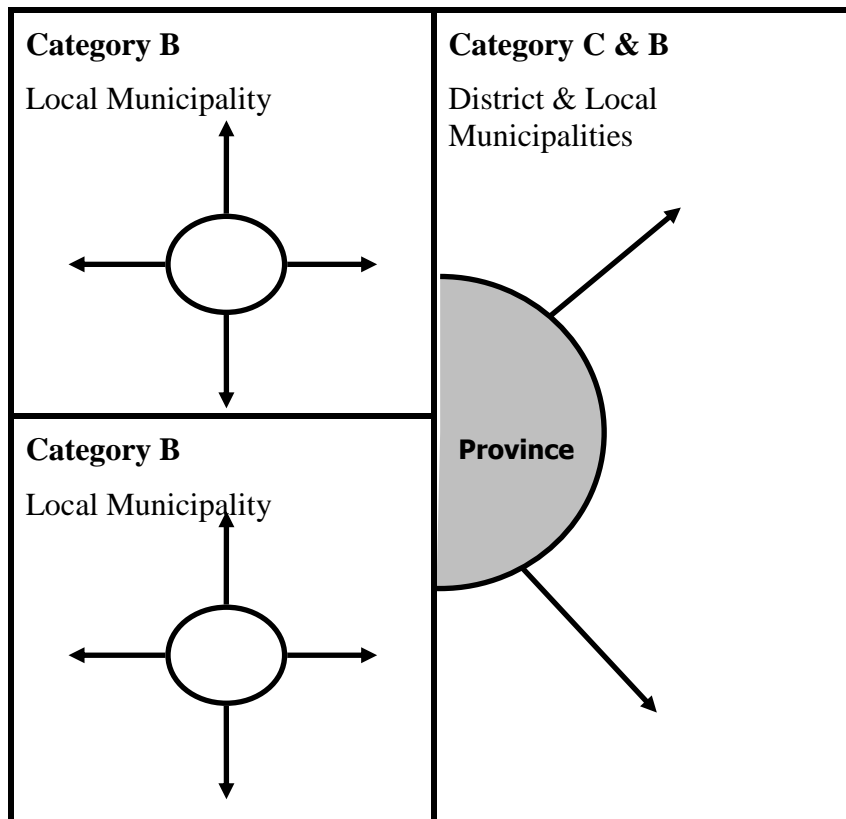


Figure 4.7: District and Local Municipality Functions Assigned to Provinces



While this form of arrangement has made some contribution towards clarifying the distinction between Category B and Category C responsibilities, its classification remains *ad hoc*. As such, the uncertainty remains since district municipalities may at some point decide to retract such service delivery arrangements, leaving local municipalities in a constant state of flux. It also illustrates that basic service delivery functions are no longer devolved but are delegated to local municipalities.

The Demarcation Board claims that the idea is no longer that district councils should provide the services themselves, but that they must coordinate them: that district municipalities are service authorities whilst local municipalities are service providers.³⁰⁹ National government can instruct local municipalities to extend services to other municipal areas on behalf of the district, but cost recovery remains the responsibility of local municipalities. The co-existence of the Amendment Act and the ministerial authorisation for local municipal service delivery

³⁰⁹ Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

has without doubt created confusion and thereby increased uncertainty rather than offered clarity on what exactly the respective municipal powers and functions are.

The two-tiered system of local government has an implicit hierarchy, placing local municipalities (except for a few stronger local municipalities)³¹⁰ at a subordinate level, as merely the ‘delivery arm’ of district municipalities. As such, local municipalities have insignificant autonomy in the provision of basic services. Administrative decentralisation in this respect is by delegation as functions, power and authority for basic service delivery get assigned and reassigned by the national executive on an annual basis.

4.6 Hierarchy and Concurrency in the Division of Service Delivery Functions

The centralist tendencies experienced in the promulgation of the Amendment Act are also identifiable in the overall system of intergovernmental relations with regard to the implementation of service delivery functions. The responsibility for service delivery in general is shared across the three spheres of government. Some national or provincial designated functions - whether exclusive or concurrent - impact on the administrative autonomy of municipalities.

In essence, the national sphere of government is the primary sphere for regulatory oversight and determines the norms and standards for service delivery (including that of basic services). Local autonomy is therefore by default limited by norms and standards prescribed by national government. This is justifiable and necessary in a country where service delivery was unequal and discriminatory in its application.

Some functions are explicitly identified in the Constitution as concurrent or shared between spheres of government. (See Appendix 5 and 6). However, even where the competencies are exclusively national or provincial, legislative decisions can impose duties on local government. Local government is often expected to assist other spheres of government with the implementation of exclusive national or provincial functions.³¹¹ The constitutional

³¹⁰ In KwaZulu-Natal the district performs most of the major functions except for the Msunduzi, uMhlathuze and Newcastle municipalities. (Local Government Bulletin. 2003. Volume 1. Page 8.

³¹¹ Interview with Environmental Manager Officer. (KwaZulu-Natal Department of Agriculture and Environmental Affairs). Pietermaritzburg. 8 February 2008.

obligations associated with cooperative government indirectly require municipalities to support the national and provincial spheres in the implementation of their specific constitutional mandate. The provision of housing, for example, is a concurrent national and provincial government competency, yet it has become a duty shared by all three spheres of government, despite the fact that housing is not a local government function or responsibility.³¹²

The general tendency is for national government to provide finances, setting out the norms and standards, while the provincial government oversees implementation. In many cases, municipalities become implementing agents for provincial governments insofar as they are expected to supplement the national and provincial housing initiatives with, firstly, the provision of service delivery infrastructure, and, secondly, supply water, sanitation and electricity.³¹³ However, the service delivery decision is one which is made by national and/or provincial government.

By identifying water, sanitation and electricity as the fundamental responsibilities of local government, the misconception is created that municipalities can prioritise the delivery of basic services. In reality, however, the extent to which national and provincial functions overlap with those of local government means that the activities of other spheres often dictate or determine the local service delivery agenda. This is widespread and not limited to a few functions. For example, municipalities are tasked with upgrading existing informal settlements, eradicating backlogs and providing these areas with access to basic services. On the other hand, national and provincial government are more involved in the provision of new developments, such as low-cost housing. However, both functions require local government to extend their scope of basic service delivery. In this respect, it is also questionable to what extent a local municipality can give effect to its constitutional responsibility to “structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.”³¹⁴

³¹² SACities Network. (2007). State of Cities Finances Report.

³¹³ Interview with Municipal Councillor. (Msunduzi Municipality). Pietermaritzburg. 28 May 2009.

³¹⁴ Section 153 (a) of the Constitution of South Africa. (Act 108 of 1996).

A cursory glance at the functional areas of local government as listed in Schedules 4B and 5B of the Constitution illustrates the extent to which most resemble the provincial functional areas listed in Schedules 4A and 5A. In other words, a comparison of the two schedules clearly shows that a considerable overlap exists between the powers and functions of local and provincial governments. This is made more difficult since the content of the respective functional areas is not defined. Table 4.4 illustrates the duplication in provincial and municipal functional areas.

Table 4.4: Comparison of Similar Provincial and Municipal Functional Areas

Provincial Functional Areas	Local Functional Areas
Airports (4A)	Municipal airports (4B)
Disaster management (4A)	Firefighting services (4B)
Health services (4A)	Municipal health services (4B)
Liquor Licences (5A)	Control of undertakings that sell liquor to the public (5B)
Pollution control (4A)	Air pollution (4B)
Provincial recreation & amenities (5A)	Beaches & amusement facilities (5B)
Provincial roads (5A)	Municipal Roads (5B)
Provincial traffic (5A)	Traffic & parking (5B)
Provincial sport (5A)	Local sports facilities (5B)
Public transport (5A)	Municipal public transport (4B)
Regional planning & development (5A)	Municipal planning (4B)
Tourism (4A)	Local tourism (4B)
Trade (4A)	Trading regulations (4B)

Extracted from Schedules 4 and 5 of the Constitution of South Africa. (Act 108 of 1996).

The very nature of public services entails a degree of intergovernmental overlap, and concurrency is inevitable between the functions of national, provincial and local government. As such, functional overlaps are widespread and even unavoidable. However, the critique is that while in terms of the Constitution all spheres of government have administrative autonomy in the delivery of a service in a common functional area, be it housing or health care, in practice this often leads to local government becoming implementing agents for other levels of government. As such, the local development agenda is often determined by national or provincial government.

Even where the competencies are distinct, judicial decisions can impose national and or provincial responsibilities onto municipalities duties. In perhaps one of South Africa's best known Constitutional Court cases with regard to citizens' right to basic services, commonly referred to as the Grootboom case,³¹⁵ squatters who had been evicted demanded that the Oostenberg Municipality (Western Cape Province) provide them with adequate basic temporary shelter or housing for them and their children which, according to Bill of Rights, they are legally entitled to.³¹⁶ The municipality referred the claim to the provincial government. However, the Constitutional Court held that this duty fell on all three spheres of government – national, provincial and local – despite the fact that housing, as a competency, does not fall within local government's list of competencies.³¹⁷

The Constitutional Court reasoned that based on the principle of cooperative government, the policies and actions of all three spheres must cohere and be coordinated in order to give effect to the socio-economic right to housing. National government was deemed responsible for the provision of finances, provincial government for the implementation of a housing programme, and municipalities for the actual provision of the service delivery infrastructure and the provision of water, sanitation and electricity.³¹⁸

Such scenarios of indefinite delegations from national and provincial functions can translate into local municipal planning problems as their development agenda is informed by the service delivery agendas of national and provincial government.³¹⁹ Municipalities have long been criticised for their ineffective and inadequate Integrated Development Plans (IDPs). Municipalities have been accused of drafting broad objectives as opposed to specific local development plans.³²⁰ While this criticism is mostly justified, the growing range of cross-

³¹⁵ *Grootboom v Oostenberg Municipality and Others* 2000 (3) BCLR 277 (C).

³¹⁶ Steytler, N. and De Visser, J. (2007) Local Government Law of South Africa. Durban: LexisNexis.

³¹⁷ Schedule 4A of the Constitution of South Africa. (Act 108 of 1996).

³¹⁸ De Visser, J. Mettler, and Cottle, E. *Realising The Right to Water: Pipe Dream or Watershed?* In Law, Democracy & Development. (2003) 7(1). Pp. 1-87.

³¹⁹ Interview with Municipal Councillor. (Msunduzi Municipality). Pietermaritzburg. 28 May 2009. And SACities Network. (2007). State of Cities Finances Report.

³²⁰ Centre for Development and Enterprise. Post-Apartheid Local Government Reforms: A Small Town Perspective. March 2003.

sectoral national and provincial government programmes increase the responsibilities of municipalities, thus complicating their planning and budgeting problems.³²¹

The lack of clarity of service delivery powers and functions also has implications for cross-sectoral programmes. Currently, national or provincial departments are unsure whether to delegate line-functions to the district or to local municipalities. For example, some local municipalities have been delegated the responsibility to manage the national Department of Water Affairs and Forestry's (DWAFF) water schemes; however, (based on the Municipal Structures Amendment Act) these are the responsibility of district municipalities.³²²

Concurrency can also cause a duplication of service delivery, which is likely to occur when more than one sphere of government is responsible for a functional area, as were (and in some cases continue to be) DWAFF's water schemes. For years, DWAFF established local water schemes, while some local municipalities created and managed their own water project physically proximate to DWAFF's.³²³ The duplication of water schemes caused confusion with regard to DWAFF's and the municipalities' respective mandates and responsibilities. The result is ill-managed projects, with no maintenance plans - in some instances resulting in the total collapse of water schemes.³²⁴ Uncertainty over responsibility can lead to inefficient and slow service delivery, or in worse cases, lead to a situation where none of the spheres takes responsibility for the service. As De Visser argues:

*...where two levels of government are responsible for the same functional area, the state government withdraws from the field, leaving local government as the sole provider of a service. While municipalities may wish to exercise their autonomy in the area, the withdrawal of the senior levels is often accompanied by the withdrawal of state funds, leaving local government with an unfunded mandate. The result may be again the failure to provide an adequate service.*³²⁵

³²¹ Interview with Municipal Councillor. (Msunduzi Municipality). Pietermaritzburg. 28 May 2009. And National Treasury. Intergovernmental Fiscal Review 2003/04.

³²² SACities Network. (2007). State of Cities Finances Report.

³²³ Portfolio Committee for Provincial and Local Government. (2003). Report on Study Tour of Municipalities.

³²⁴ SACities Network. (2005). Government to Amend Water Services Law.

³²⁵ De Visser, J. (2002). *Powers of Local Government*. In South Africa Public Law. Volume 17. Page 223.

Shared powers and functions imply shared accountability. De Visser refers to this as potentially *a system of organized irresponsibility*.³²⁶ In cases where functions are concurrent, and no services, or substandard services have been delivered, blame can be shifted by one sphere of government to another, and no-one can be held responsible by the public. He claims that this practice defers accountability and often results in a lack of transparency. As he says “the electorate simply does not know who is to be held accountable for what function.”³²⁷

Uncertainty, continuous adjustments and temporary arrangements with regard to service delivery responsibilities can only but complicate effective and sustainable service delivery. Each time adjustments are made, municipalities face administrative and financial consequences such as changing revenue streams (which will be considered in the next chapter). Adjustments necessitate the transfer of assets, liabilities and administrative data, as well as the alignment of existing by-laws, regulations and resolutions. Thirteen years have passed since the Constitution of South Africa has established local government as an autonomous sphere of government. However, local municipalities continue to undergo reorganisation and restructuring, and their administrative power and authority remain unclear. At this point in time, it remains ambiguous whether local government’s constitutional mandate for basic service delivery is an autonomous and devolved function, or whether it is a centrally prescribed or delegated function.

Conclusion

It has been argued in this chapter that despite the constitutional allocations of powers and functions to the respective spheres of government (as stipulated in Schedules 4 and 5), the detailed process in practice remains hierarchical and open to national government intervention. Analysing the extent of administrative decentralisation while keeping in mind some of the limitations of political decentralisation explored in the previous chapter, makes one question - yet again - the true extent of local government autonomy.

³²⁶ De Visser, J. (2002). *Powers of Local Government*. In South Africa Public Law. Volume 17. Pp. 223-244.

³²⁷ De Visser, J. (2002). *Powers of Local Government*. In South Africa Public Law. Volume 17. Pp. 223-244.

The complications which arose from the Amendment Act have brought to the fore underlying tensions in the intergovernmental configuration between district and local municipalities, and offers an opportunity to reassess the need for such a distinction as well as the need for district municipalities altogether, which is a proposition which will be revisited later on in this study.

This chapter has shown that providing basic services across different spheres of government inevitably poses problems of concurrency. However, concurrent service delivery obligations often translate into local government becoming the subservient delivery arm of the other spheres of government. Although local government is constitutionally protected as a distinct sphere of government, its administrative powers and functions remain open to interpretation, as well as subject to national or provincial adjustment.

The administrative decentralisation of basic service delivery functions to Category B municipalities is far from complete. The Municipal Structures Act of 1998 and the subsequent Amendment Act (2000) were meant to finalise and clarify the allocation of powers and functions between Category B and C municipalities, but have in fact intensified service delivery problems, which is resulting in the continuation of uncertainty, duplication, undue administrative cost in service delivery, as well as a general lack of coordination between the three spheres of government.

The debate on the division of powers and functions has not yet been resolved, and may never be. While the constitutional framework devolves administrative functions to local government, this chapter has shown that, in reality, the administrative decentralisation of service delivery functions to local government is more characteristic of delegation rather than devolution.

The next chapter will explore the complexities associated with cost recovery. This is a function which has been devolved to local government, and one which is significantly affected by the extent of administrative decentralisation discussed here.

CHAPTER FIVE

COST RECOVERY

Introduction

Decentralisation in South Africa has resulted in the establishment of local government as an autonomous sphere of government. Previous chapters have described the structural and procedural configuration of local government, and some of its underlying tensions. For example, the two-tiered system of local government that exists between Category B and Category C municipalities as well as the assignment of fundamental basic service delivery functions and responsibilities to politically autonomous local governments. The previous chapter on administrative decentralisation highlighted the enormity of the service delivery obligations devolved to local government. This particular chapter is concerned with an additional local government responsibility, namely, cost recovery.

This chapter investigates the extent of local government autonomy by focusing particularly on the devolution of cost recovery as an autonomous local government function. The legislative framework impels local government to take on the full responsibility for recovering costs associated with the provision of basic services. The argument will be made here that the apartheid legacy of unequal development and poverty poses a wide range of challenges for the recovery of costs by municipalities.

The general principle of cost recovery and some of the fundamental arguments supportive of cost recovery will be examined. This chapter commences by explaining the general concept of cost recovery and the rationale behind it. It briefly examines the legislative framework of cost recovery in South Africa and the obligations it confers on local government. It contends that while in theory the principle of cost recovery is sound and justifiable, it poses particular challenges for local municipalities in South Africa, particularly regarding the provision of basic services.

The chapter identifies a number of challenges pertaining to cost recovery which face local government in general, as well as challenges more specific to Category B municipalities. The general cost recovery challenges include those emanating from local capacity, such as: (i) the

inability to accurately calculate public service delivery costs; (ii) the strategies of cost recovery; and (iii) perhaps the most difficult and complicated cost recovery challenge – the national mandate of Free Basic Services.

The challenges more specific to Category B municipalities, it will be argued, relate directly to the hierarchical two-tiered system of local government. The challenges are complex because the assignment and reassignment of basic service delivery authority to and from district and local municipalities remains ongoing. This chapter will show that cost recovery poses complex implementation problems for local municipalities, and that these problems impact on local municipal autonomy.

5.1 Defining Cost Recovery

In general, cost recovery is referred to as the collection or capturing of the costs of providing a service through fees, levies or other mechanisms.³²⁸ Proponents of cost recovery, particularly the World Bank and other international institutions, present moral, environmental and fiscal reasons as to why governments must pursue cost recovery. Morally, the motivation for cost recovery centres on the liberal notions of rights and responsibilities: if people have a *right* to socio-economic rights such as water, then they also have the *responsibility* to pay for it.³²⁹ In environmental terms, cost recovery is regarded as a strategy that will limit wastefulness. The argument, for example, is that people will be less likely to waste water if they are made to pay for it. When viewed in fiscal terms, cost recovery means that governments need no longer finance the provision of basic services, thus making money available for extending further public service delivery.³³⁰

The fiscal notion is that only by paying the full cost of a public service can one appreciate its true “value”. That:

³²⁸ World Bank. (1994). World Development Report: Infrastructure for Development. New York: Oxford University Press. Page 42.

³²⁹ World Bank. (1994). World Development Report: Infrastructure for Development. New York: Oxford University Press. Pp. 42.

³³⁰ World Bank. (1994). World Development Report: Infrastructure for Development. New York: Oxford University Press. Page 43.

*only a fee reflecting the costs will encourage users to correctly value the service they receive [and charging a fee] will help reverse the 'entitlement mentality' that has been the historical result of subsidizing public services.*³³¹

The argument is thus that the inclusion of moral, environmental and fiscal considerations in the recovery of public services costs will lead to sustainable, efficient and effective service delivery. However, such sentiments have inherent complications when applied to the provision of basic services in South Africa. The cost recovery of basic services such as water and sanitation has long been controversial. On the one hand, developing nations backed by the World Health Organization and UNICEF³³² argue that the health and social benefits associated with access to basic water and sanitation services outweigh the immediate and largely irrecoverable financial costs of public service delivery.³³³ It is argued that as long as people have no access to basic services, there can be no income generation, poverty alleviation or local economic development. The assumption is that access to basic services will improve peoples' living conditions, making them economically active which, in turn, will lead to economic development, thereby resulting in users being able to afford user fees, and therefore in government being able to recover costs.

On the other hand, economists at the World Bank argue that a willingness to pay and the affordability of user fees are prerequisites for investing in basic service delivery infrastructure. Providing basic services to those unable or unwilling to pay will result in infrastructure being underutilised and falling into disrepair at huge costs to the public sector.³³⁴

Some argue that user fees should be charged even when poverty is high because access to free services leads to abuse or neglect, as well as wastage and unsustainability.³³⁵ In addition,

³³¹ World Bank. (1994). World Development Report: Infrastructure for Development. New York: Oxford University Press. Page 44.

³³² UNICEF Acronym for United Nations International Children's Emergency Fund.

³³³ Ridde, V. (2003). *Fees-For-Services, Cost Recovery, and Equity in a District of Burkina Faso Operating The Bamako Initiative*. In Bulletin of the World Health Organization. Nr 81.

³³⁴ World Bank. (2004). World Development Report 2004: Making Services Work for Poor People. Washington: World Bank.

³³⁵ World Bank. (2004). World Development Report 2004: Making Services Work for Poor People. Washington: World Bank. Page 5.

they argue that when people *have* to pay for a service, they make sure they get it.³³⁶ Consumers who pay for basic services are more critical of the quality of what they get. Those in favour of user charges claim that it improves client power and accountability since customers can demand better services.³³⁷ Such arguments ignore the potential that socio-economic inequality can increase because service delivery may very well be targeted only to those who can afford to pay. In short, there is no clear-cut answer, and both arguments have merit.

5.2 Cost Recovery in South Africa: The Policy Framework

Under the new decentralised system of governance, municipalities, which have been assigned a range of autonomous powers and functions, as well as the responsibility for basic service delivery, are at the forefront of implementing cost recovery strategies. Under apartheid rule, local governments had limited cost recovery obligations. The highly centralised system of governance meant that central government retained control over local financial autonomy. Local governments had little service delivery authority, delivered few services and therefore had limited cost recovery potential.³³⁸ Where user fees, tariffs and general property rates existed during apartheid, these charges were related to utility or consumption costs as opposed to including the broader operational or maintenance costs.³³⁹

Under the new democratic dispensation, discussions on cost recovery emerged. However, only towards the end of apartheid in the mid-1990s has cost recovery become an explicit and widespread government policy objective. According to some authors such as Bond and McDonald and Pape, the apartheid state heavily subsidised basic services in white suburbs, in industry, as well as in black townships, the self-governing territories and independent homelands, although not to the same extent as that of white areas. In fact, state subsidisation

³³⁶ World Bank. (2004). World Development Report 2004: Making Services Work for Poor People. Washington: World Bank. Page

³³⁷ World Bank. (1994). World Development Report: Infrastructure for Development. New York: Oxford University Press.

³³⁸ Bruggemans, C. (2003). A Change of Pace. Johannesburg: Wits University Press.

³³⁹ Bond, P. (2000). Elite Transition: From Apartheid to Neoliberalism in South Africa. Johannesburg: Wits University Press. And McDonald, D. and Pape, J. (2000). The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

to black local authorities continued despite the service boycotts of the 1980s.³⁴⁰ Although Bond argues that this was largely motivated by a fear of escalating popular revolts.³⁴¹

The initial macro-economic policy, as represented in the 1994 Reconstruction and Development Programme (RDP) policy, focused on the nationalisation of state assets and central control over service delivery.³⁴² Cost recovery was limited to charging user fees, tariffs and general property rates for services, which were criticised by some for not being a true reflection of the real costs, but merely reflected marginal costs.³⁴³ The RDP policy was replaced in 1996 with the Growth, Employment and Redistribution (GEAR) strategy. GEAR introduced a move away from heavily state subsidised basic service delivery towards a reduced central government role where responsibilities for cost recovery were to be decentralised to local government.³⁴⁴

Local government revenue powers are regulated by the Constitution, the Municipal Structures Act, the Municipal Systems Act, and the Municipal Property Rates Act. Table 5.1 provides a brief summary of the respective legislative provisions.

³⁴⁰ Bond, P. (2000). Elite Transition: From Apartheid to Neoliberalism in South Africa. Johannesburg: Wits University Press. And McDonald, D. and Pape, J. (2000). The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

³⁴¹ Bond, P. (2000). Elite Transition: From Apartheid to Neoliberalism in South Africa. Johannesburg: Wits University Press.

³⁴² Bruggemans, C. (2003). A Change of Pace. Johannesburg: Wits University Press.

³⁴³ Bruggemans, C. (2003). A Change of Pace. Johannesburg: Wits University Press.

³⁴⁴ Adelzadeh, A. (1996). *From The RDP To GEAR: The Gradual Embracing of Neo-Liberalism In Economic Policy*. In Transformation 31. Pp.66-95.

Table 5.1: Policy Assignment of Local Government Revenue Powers.

The Constitution of South Africa (Act 108 of 1996)	
Taxes	User Charges
<p>Section 229</p> <ul style="list-style-type: none"> - Property taxes - Taxes on consumption of local government provided services allocated exclusively municipalities. - Local government explicitly prohibited from levying income tax, VAT, general sales tax or custom duty. - All taxes must be regulated by national legislation. 	<p>Section 156</p> <ul style="list-style-type: none"> - No specific assignment of user charges - revenue powers incidental to power to provide services; powers are either Schedule B powers or assigned. - Schedule B powers are subject to oversight by national and provincial government. - Its assigned power must also be regulated by assigning sphere. - Category B and C municipalities must be distinguished in the exercise of original powers and assigned powers
General Local Government Legislation	
Taxes	User Charges
<p>Municipal Structures Act (Section 84(p))</p> <ul style="list-style-type: none"> - The imposition and collection of taxes as related to the distribution of powers between district and local municipalities. <p>Municipal Systems Act (Section 11(3))</p> <ul style="list-style-type: none"> - Powers include imposing & recovering rates, taxes, levies, service fees and surcharges on fees. <p>Municipal Systems Act (Section 74(2)(f))</p> <ul style="list-style-type: none"> - Provision for surcharge on a tariff can be made in the Tariff policy. <p>The Municipal Property Rates Act</p> <ul style="list-style-type: none"> - General local tax or levy for general municipal services. - Administered by local governments based on an assessment of the value of land and improvements thereon. - Tariffs and rates determined by national government. 	<p>Municipal Structures Act (Section 83 & 84)</p> <ul style="list-style-type: none"> - Provides framework for allocating Schedule B functions across district and local municipalities. - District municipalities assigned power for key local government trading services by default in Section 84. - Powers can be either reassigned by national (Schedule 4B functions) or provincial (Schedule 5B) proclamation. <p>Municipal Systems Act</p> <ul style="list-style-type: none"> - Provides framework for when and how to assign non-schedule B functions.

While the Constitution establishes the rights of citizens to have access to basic public services such as water and sanitation,³⁴⁵ it constrains these rights with regard to the state's availability of resources. It explicitly notes that:

*[T]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.*³⁴⁶

Calling officially for the end of the so-called culture of non-payment evident during the apartheid local government boycotts, then president Nelson Mandela in 1997 highlighted the need for local government cost recovery:

*We can no longer simply bemoan the past. The fact that we were deprived does not entitle us to free services. And it would be self-defeating to refuse to pay for services because we demand improvements first; or to pay self-imposed flat-rates where services are being efficiently delivered. The more our councils are strapped for cash because of our debts, the less they can do to improve conditions or even to maintain services.*³⁴⁷

Examining post-apartheid local government policies and legislation illustrates widespread government subscription to cost recovery, including the recovery of costs associated with each of the three basic services: water, sanitation and electricity.

With regard to water, for example, the White Paper on Water and Sanitation (1994) stated that government may subsidise the cost of construction of basic minimum services but not the operating, maintenance or replacement costs. The subsequent National Sanitation Policy White Paper (1996) stated that payment by the user is essential in order for the sanitation systems to be sustainable.

The White Paper on Water Policy (1997) proposed that in order to

promote the efficient use of water, the policy will be to charge users for the full financial costs of providing access to water, including infrastructure development and catchment management activities.

³⁴⁵ Section 27(1) of the Constitution of South Africa. (Act 108 of 1996).

³⁴⁶ Section 27(2) of the Constitution of South Africa. (Act 108 of 1996).

³⁴⁷ Media Statement by Nelson Mandela. 16 May 1997. Available at www.anc.org.za/ancdocs/history/mandela/1997. Accessed 1 June 2008.

The White Paper on Local Government (1998) stipulates that people are only to receive services that they can afford. They must pay the full cost in direct proportion to the amount they consume, and subsidisation must be avoided. Section 56 of the National Water Act (Act 36 of 1998) lists extensively the aspects that should be included in determining water user charges. These include costs associated with water resource management;³⁴⁸ as well as for funding water resource development which includes construction,³⁴⁹ operational and maintenance costs;³⁵⁰ and water distribution costs.³⁵¹ The proviso is that rates may differentiate in respect of demographic areas.³⁵² The same applies to determining the rates for sanitation and waste-water treatment.³⁵³ While the 1998 National Water Act calls for calculating the full costs associated with the provision of water.

With regard to the provision of electricity, the White Paper on Energy Policy (1998) stated that government policy is to encourage energy prices to be as cost-reflective as possible. This was reiterated in the National Energy Act (Act 34 of 2008) where it states that the national Minister must adopt measures that provide for universal access to appropriate forms of energy or energy services, limited by the affordability and cost-effectiveness of such provision.³⁵⁴

The Municipal Systems Act (2000) also stipulates that residents have the duty to pay for *all* of their municipal services. The Act instructs municipalities to levy and recover fees that reflect the costs associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, as well as interest charges.³⁵⁵

In other words, it is clear that the legislative policy framework pertaining to the provision of basic services reiterates the national government's directive of cost recovery. The result is that as the primary basic service provider, local government has the primary function and responsibility of cost recovery. However, this function has resulted in a number of

³⁴⁸ Section 56.2 (a) of the National Water Act. (Act 36 of 1998).

³⁴⁹ Section 56.2 (b) (ii) of the National Water Act. (Act 36 of 1998).

³⁵⁰ Section 56.2 (b) (iv) of the National Water Act. (Act 36 of 1998).

³⁵¹ Section 56.2 (b) (vi) of the National Water Act. (Act 36 of 1998).

³⁵² Section 56.4 (a) (iii) of the National Water Act. (Act 36 of 1998).

³⁵³ Section 56.5 of the National Water Act. (Act 36 of 1998).

³⁵⁴ Section 5.1 and 5.2 (g-h) of the National Energy Act. (Act 34 of 2008).

³⁵⁵ Section 74.2 (d) of the Municipal Systems Act. (Act 32 of 2000).

implementation challenges such as: determining the full costs; collecting user fees; and meeting their national obligation to provide Free Basic Services. Each will now be discussed.

5.3 General Challenges of Cost Recovery

5.3.1 The Challenge of Full Cost Recovery

The policy framework for local government service delivery obliges municipalities to pursue *full* cost recovery in the provision of basic services. This entails charging consumers more than the amount of consumption. Full cost recovery is regarded as the collection of *all* costs associated with the provision of a public service such as the cost of materials, administration, maintenance, depreciation, as well as anticipated expenditures.³⁵⁶ Tariffs, for example, should include more than the cost of bulk purchases in the case of electricity and water. It should include: distribution costs; distribution losses; maintenance of infrastructure; and other fixed assets depreciation expenses; as well as administration costs.³⁵⁷ At its most inclusive or comprehensive, tariffs should also take account of bad debts and/or non-payment.³⁵⁸ The argument is that:

*unless all of the costs related to providing and maintaining a service (technical, human resource, institutional) are identified, organized, and covered in a coherent manner with sources of funds, a system cannot be considered to be sustainable.*³⁵⁹

One challenge is *how* to calculate the full costs associated with the delivery of a public service. In theory, calculating the costs of a service is based on averaging the cost of providing that particular service. This includes estimates of capital, labour and variable inputs

³⁵⁶ Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model.

³⁵⁷ Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model.

³⁵⁸ Cardone, R. and Fonseca, C. (2003) Finance and Cost Recovery – Decades of Controversy. Den Haag: International Water and Sanitation Centre (IRC).

³⁵⁹ Cardone, R. and Fonseca, C. (2003) Finance and Cost Recovery – Decades of Controversy. Den Haag: International Water and Sanitation Centre (IRC). Page 17.

costs per unit of service provided. The next step is to calculate output standards for each service.³⁶⁰ The Financial and Fiscal Commission (FFC) explains this as follows:

*[U]sing the estimates of average cost it is then possible to deduce the total cost of providing a service at some specified standard. If one then sums across all services, it is possible to obtain an estimate of the total costs to be met ... based on the derived average costs and chosen output standards.*³⁶¹

Common expenses incurred by municipalities in the delivery of basic services are the cost of bulk purchases of water and electricity; distribution costs; distribution losses; infrastructure maintenance costs; depreciation of assets or infrastructure; interest charges (if capital is borrowed); and general administration costs.³⁶² The intention is that the calculation must include the marginal costs of production plus a portion of long-term operating and maintenance costs. This means, for example, that the price of electricity must include the costs of connecting the household to the electricity grid; a portion of the amortised operating and maintenance costs of the bulk infrastructure required to generate and distribute electricity; and a volumetric rate for the marginal cost of every kilowatt hour of electricity consumed.³⁶³

However, the ability of municipalities to recover the full cost associated with service delivery depends on the type of service. Some services benefit the community as a whole, while others benefit households or individual consumers. Stormwater drainage, fire services and streetlighting, for example, are services to the community as a whole and are inclusive and inexhaustible. No individual service charge can be collected for these services, which tend to be charged at an approximate average consumption rate.³⁶⁴

³⁶⁰ Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model.

³⁶¹ Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model. Page 15.

³⁶² Cardone, R. and Fonseca, C. (2003) Finance and Cost Recovery – Decades of Controversy. Den Haag: International Water and Sanitation Centre (IRC).

³⁶³ Cardone, R. and Fonseca, C. (2003) Finance and Cost Recovery – Decades of Controversy. Den Haag: International Water and Sanitation Centre (IRC).

³⁶⁴ SACities Network. (2007). State of Cities Finances Report.

On the other hand, public services such as electricity and water are consumed by individual households and can be measured and charged on an exclusive basis.³⁶⁵

Distinguishing between the types of services is not always that obvious. Some services, such as refuse removal and sewerage services, are charged to individual households, but have wider public benefit.³⁶⁶ Some services are self-financing insofar as residents are charged a flat-rate for certain municipal services, such as sanitation and refuse removal, which are payable regardless of utilisation and a surplus may be yielded.

The provision of bulk services like electricity and water are often a municipality's most profitable income generator. This may offset other services provided by a municipality that may not always be affordable for residents or cannot always be recovered; for example, ambulance or fire services. These services then need to be subsidised by other sources of funding, either through subsidised external funds such as national government grants, or surcharges levied on other services.³⁶⁷

Some municipal services, however, do not generate any income but are a municipality's responsibility to provide. For example, maintaining the verges or sidewalks, graveyards, or maintaining cultural and recreational buildings. These are often difficult for municipalities to provide without surplus funds.³⁶⁸

Determining the full costs of service delivery is near impossible. Some service charges are easier to calculate than others. Water and electricity, for example, can be accurately measured in volumetric terms. However, expected operating and maintenance costs can only be estimated. With regard to electricity, municipalities tend to charge households a connection fee, for the amount of electricity consumed, as well as a flat-rate which is an estimate of operating and maintenance costs. Although some household consumption 'units' can be measured, the actual cost of service production and maintenance is difficult to

³⁶⁵ SACities Network. (2007). State of Cities Finances Report.

³⁶⁶ SACities Network. (2007). State of Cities Finances Report.

³⁶⁷ Interview with Municipal Finance Officer. (Msunduzi Municipality). Pietermaritzburg 28 August 2008.

³⁶⁸ Interview with Municipal Finance Officer. (Msunduzi Municipality). Pietermaritzburg 28 August 2008.

determine. There are a lot of hidden costs and inevitable joint costs that are difficult to apportion.³⁶⁹

Calculating costs where the pricing of service provision is not easily measurable difficult. Services such as refuse collection are generalised as it is near impossible to calculate how much refuse households are creating. Cost recovery models follow a flat-rate based on an overall average. However this is to the disadvantage of those households which generate less refuse because they pay the same amount as households which do. A monthly availability charge may be levied to all ratepayers even if the consumer does not make use of such services. For example, the bill for electricity can include consumption charges, as well as a standard connectivity charge (sometimes referred to as a demand charge). A fixed availability charge enables cross-subsidisation.³⁷⁰

Basing prices on the real economic cost of supply and service would clearly be problematic for poor households. If this is strictly applied according to the costs of the infrastructure required alone, it is obvious that the connection fees in rural or underdeveloped localities will be higher than in suburbia, thereby discriminating against poor households. In order to compensate or subsidise service delivery to rural areas, full cost recovery would then need to include the amount of the operating surplus needed to compensate for the loss of revenue (resulting from providing free basic services and the property rates rebate awarded to indigents), as well as for financing general services and future capital expansion of the service concerned.³⁷¹

Those who adamantly oppose cost recovery of basic services accuse government of being pre-occupied with profit.³⁷² The Department of Social Welfare has raised objections against municipalities' current practice of setting tariffs for basic services at a level in order to generate a surplus.

³⁶⁹ Interview with Municipal Finance Officer. (Msunduzi Municipality). Pietermaritzburg 28 August 2008.

³⁷⁰ Interview with Municipal Finance Officer. (Msunduzi Municipality). Pietermaritzburg 28 August 2008.

³⁷¹ Interview with Municipal Finance Officer. (Msunduzi Municipality). Pietermaritzburg 28 August 2008.

³⁷² Bond, P. (2000). Elite Transition: From Apartheid to Neoliberalism in South Africa. Johannesburg: Wits University Press. And McDonald, D. and Pape, J. (2000) The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

*Governments are supposed to deliver particular public services at cost with no deliberate profit element built into the consumer tariff structure. The tariff is supposed to cover only the per unit of the services supplied...Where local governments are allowed to compile their tariffs in such a way as to deliberately induce a surplus, this becomes an indirect tax on particular services with a redistribution of wealth effect which is unacceptable as the benefit-received principle is violated. There is no moral justification for consumers of particular services to be taxed in order to subsidize the users of collective services. It is unfair because not all users are tax payers.*³⁷³

Such an opinion is to some extent morally justifiable; however, discontinuing this practice would threaten the financial stability of many municipalities in South Africa. It is commonly known that most municipalities generate a large portion of their revenue from surpluses accrued from the sale of water and electricity. However, authors such as Bond, McDonald and Pape who oppose full cost recovery and/or surcharges do not propose how else local government can raise revenue.³⁷⁴ The assumption is that revenue can be offset by increased intergovernmental grants and increased taxes, which are problematic in themselves. (This will be investigated in the subsequent chapters on Fiscal Decentralisation and Fiscal Service Delivery Challenges). The irony is that building in a surplus or profit element in a consumer tariff structure is the very method that enables cross-subsidisation, and is to the advantage of those consuming less.

To summarise, full cost recovery depends on the ability of municipalities to determine the costs associated with the different types of services as well as the recovery rate. From a purely mathematical perspective, calculating the costs associated with public services is complex by itself. It is not easy to delineate operating costs, in other words, to isolate costs and revenues associated with a given service, because some resources (human as well as capital) are shared between different service sectors and costs and are therefore difficult to

³⁷³ Department of Social Development. (2002). Transforming the Present Protecting the Future. Draft Consolidated Report. Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. Page 138.

³⁷⁴ Bond, P. (2000). Elite Transition: From Apartheid to Neoliberalism in South Africa. Johannesburg: Wits University Press. And McDonald, D. and Pape, J. (2000) The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

apportion.³⁷⁵ Despite the national government's insistence on municipalities pursuing full cost recovery, under certain circumstances, full cost recovery is just impossible.

5.3.2 The Challenge of Recovering Costs.

The widespread devolution of basic service delivery functions coupled with the responsibility for cost recovery places the onus on municipalities to seek mechanisms for the collection of user fees if they are to eradicate basic service delivery backlogs, extend basic service delivery, as well as sustain service provision. However, the implementation of cost recovery strategies is problematic. For example, recovering costs from consumers is challenging. Administratively, the capacity for billing and collecting revenue must be in place. McDonald *et al* argue that many municipalities lack a workable administrative system. This is a fundamental weakness because the enforcement of cost recovery “requires a measuring system that allows a service provider to allocate costs to individual end-users, a billing system that informs consumers of their payment obligations, and collection mechanisms which ensures the payment of bills.”³⁷⁶

According to the Auditor-General, municipalities' billings and revenue collection systems are inadequate in a number of areas. Some municipalities lack the capacity to regularly bill and collect payments, and are unable to consistently and accurately measure the consumption of a particular service by an individual household or where consumption cannot be measured. At best they can approximate an average charge.³⁷⁷

In addition, many municipalities do not or are not able to accurately determine how much water or electricity is unbilled or unaccounted for because of illegal connections, leakages,

³⁷⁵ Interview with Municipal Finance Officer. (Msunduzi Municipality). Pietermaritzburg 28 August 2008

³⁷⁶ McDonald, D. and Pape, J. (2000). The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers. Page 20.

³⁷⁷ Auditor-General Annual Report 2007-2008. SaCities Network. (2007). The State of Cities Finances Report. And Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model.

and faulty meters.³⁷⁸ Bekker *et al* argue that there are persistent ‘non-technical losses’ such as electricity theft through illegal connections or meter tampering which municipalities have not been able to include in their costing exercises.³⁷⁹

Municipalities that are competent and have an appropriate billing system in place are better able to compile tariffs and user fees policies stipulating different rates or rebates.³⁸⁰ However, even competent municipalities are faced with non-payment, regardless of how rigorous their cost recovery system is. Municipalities faced with non-payment implement a range of cost recovery strategies, most of which are stringent and predominantly punitive, which in some cases can have detrimental consequences for both the municipality and the consumer. The overriding concern is the inflexible manner in which cost recovery is being implemented in relation to poor or low-income households which default.

Bond, McDonald and Pape rightfully argue that rigorous cost recovery mechanisms ignore elements of affordability.³⁸¹ As discussed earlier in this study, the non-payment of basic services at local government level was a powerful tool to force political change in South Africa. During the 1980s, local authorities throughout South Africa faced mass action and widespread protests erupted against rent and service charges. More than two decades later and under a democratic dispensation, non-payment is still prevalent.³⁸²

However, some studies have highlighted that the culture of non-payment or *unwillingness to pay* for basic services that existed during the apartheid struggle no longer accurately explains the non-payment for municipal services. It is more likely an *inability to pay* because of

³⁷⁸ Bekker, B., Eberhard, A., Gaunt, T. and Marquard, A. (2008). A. *South Africa’s Rapid Electrification Programme*. In *Energy Policy*. Volume 36. Pp. 3115-3127.

³⁷⁹ Bekker, B., Eberhard, A., Gaunt, T. and Marquard, A. (2008). In *Energy Policy*. Volume 36. Pp. 3115-3127.

³⁸⁰ Cardone, R. and Fonseca, C. (2003). *Finance and Cost Recovery – Decades of Controversy*. Den Haag: International Water and Sanitation Centre (IRC): Den Haag. And SACities Network. *State of City Finances Report*. 2007.

³⁸¹ Bond, P. (2000). *Elite Transition: From Apartheid to Neoliberalism in South Africa*. Johannesburg: Wits University Press. McDonald, D. and Pape, J. (2000). *The Crisis of Service Delivery in South Africa*. Pretoria: Human Sciences Research Council Publishers.

³⁸² The issue of non-payment and municipal debt will be explored in the chapter on fiscal challenges to basic service delivery.

poverty and the relatively high costs of municipal services to the poor.³⁸³ The 2006 Intergovernmental Fiscal Review found that the poor face an affordability crisis which most likely is the reason why so many households default on municipal service payments. The poor in peri-urban areas do not generally have steady incomes, and are often unable to pay a monthly bill in a large, lump sum.³⁸⁴

One of the most prevalent municipal cost recovery strategy is disconnection or service cut-offs. From an administrative point, it is easy to implement: it is a matter of turning off a switch or valve that can be switched back on once payment has been made.³⁸⁵ However, there are reports where people who have not been able to pay their arrears for long periods of time are permanently disconnected and denied access to basic services. Municipalities resort to removing the infrastructure to prevent illegal (re)connections. Such removals result in a waste of previous infrastructure investment.³⁸⁶

Disconnections and service delivery cut-offs ignore the possibility that non-payment of basic services can be cyclical. Households may have non-regular income and therefore may be able to pay some months and not others. In some instances people often did not pay rates in the beginning of the school year because of school fees and uniforms. Gardeners did not pay during winter because they had no gardening work.³⁸⁷ The consequence of disconnection is that households have to pay a reconnection fee. In serious cases, consumers may be blacklisted which means that they will not be able to enter into a new municipal service agreement, thereby permanently denying them access to services.³⁸⁸

³⁸³ Stanton, A. (2006). Survey on Access to Basic Services in the Msunduzi Municipality. Unpublished Report.

³⁸⁴ McDonald, D. and Pape, J. (2000). The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

³⁸⁵ Personal Conversation with Municipal Engineer. (Msunduzi Municipality). 5 July 2007.

³⁸⁶ Chetty, I. The Free Basic Electricity Policy: A Case Study of Policy Implementation in the Msunduzi Municipality. Unpublished M.Soc.Sc. Dissertation. University of KwaZulu-Natal.

³⁸⁷ Stanton, A. (2006) Survey on Access to Basic in the Msunduzi Municipality. Unpublished Report.

³⁸⁸ Chetty, I. (2007). The Free Basic Electricity Policy: A Case Study of Policy Implementation in the Msunduzi Municipality. Unpublished M.Soc.Sc. Dissertation. University of KwaZulu-Natal.

Municipalities regularly disconnect or cut-off services at short notice, or without notice at all. Households are threatened with legal action and in some cases forceful evictions take place.³⁸⁹ Hemson criticised some municipalities for installing drip devices that literally dispense water one drop at a time.³⁹⁰

A preoccupation with cost recovery can lead to municipalities prioritising quantity above quality. In other words, a focus on short-term service delivery and affordability may lead to municipalities providing inferior or sub-standard service infrastructure in attempts to cut costs. For example, decisions might be taken to upgrade informal squatter camps or settlements as opposed to providing alternative housing and service delivery infrastructure.³⁹¹ But, as one municipal official stated, faced with financial limitations and limited revenue potential, municipalities will find it difficult to invest in better public service infrastructure.³⁹² The Municipal Systems Act (2000) gives local authorities the power to seize property for non-payment of services.³⁹³ Other cost recovery measures include legal actions which entail the attachment of private/household assets. These types of cost recovery strategies are politically unpopular, and expensive to implement.³⁹⁴

A popular local government cost recovery mechanism is the installation of prepaid meters for volumetric services such as water and electricity, which is widely practiced by municipalities, whether in-house or at communal water stands. Prepaid meters operate on a card-system where units of water (litres) or electricity (kilowatt) are purchased by the consumer. Prepaid meters allow the operational and infrastructural costs to be built into service costs. To access water or electricity, users have to pay a connection fee upfront; they can then purchase coupons to access the prepaid meters. The arguments in favour of prepaid meters are that municipalities collect money in advance, thereby avoiding non-payment. It is administratively inexpensive in that there is no need to read meters or monitor consumption,

³⁸⁹ McDonald, D. and Pape, J. (2000). The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

³⁹⁰ Hemson, D. (2000). *Closing the Gap: Policy and Practice in Water and Sanitation*. In Indicator 17 (4). Pp. 48-53.

³⁹¹ Huchzermeyer, M. and Karam, A. (2006). Informal Settlements: A Perpetual Challenge? Cape Town: University of Cape Town.

³⁹² Interview with Municipal Engineer (Msunduzi Municipality). Pietermaritzburg. 5 July 2007.

³⁹³ Section 104.1 (f) of the Municipal Systems Act. (Act 32 of 2000).

³⁹⁴ Interview with Municipal Official (eThekweni Municipality). Pietermaritzburg. 11 September 2007.

or bill and collect fees. It removes the need for postal delivery addresses for billing in areas where none exist. This is meant to help consumers budget and protects them from going into arrears.³⁹⁵

Prepaid meters have been met by widespread community opposition, where some residents even physically remove or destroy meters. Many regard prepaid meters as discriminatory insofar as they automatically disconnect people who cannot afford to purchase more units.³⁹⁶ There have been a number of attempts by communities to persuade the courts to make the installation of prepaid meters unconstitutional. In May 2008 in the Johannesburg Magistrate Court, Judge Tsoka ruled in favour of the residents of Phiri (Soweto) declaring prepaid meters as "illegal and unconstitutional".³⁹⁷ Residents immediately started digging up prepaid meters or by-passing them allowing them ongoing access to water.³⁹⁸

In October 2009, the Constitutional Court reversed this decision and dismissed an application made by residents who demanded the removal of prepaid meters by the city of Johannesburg. The Constitutional Court ruled that prepaid meters were fair and just. It deemed prepaid meters as more appropriate than conventional credit-meters because if customers default on conventional credit-meters, then interest is charged on amounts in arrears and the consumer may be blacklisted by a credit bureau, which is not the case with a pre-payment system.³⁹⁹

Some claim that the installation of prepaid meters resulted in or at least contributed to the outbreak of cholera in KwaZulu-Natal in 2000.⁴⁰⁰ In that case, people initially had access to a

³⁹⁵ Interview with Municipal Official (eThekweni Municipality). Pietermaritzburg. 11 September 2007.

³⁹⁶ See for example Bond, P. (2000). Elite Transition: From Apartheid to Neoliberalism in South Africa. Johannesburg: Wits University Press. And McDonald, D. and Pape, J. (2000). The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

³⁹⁷ Tshabalala, T. *Jo'burg Water Meters Under Spotlight After Court Ruling*. In Mail and Guardian. 10 May 2008.

³⁹⁸ The bridging of meters entails bypassing the water meter so that the gauges stop reading water consumption.

³⁹⁹ Constitutional Court of South Africa: Judgement in the Case of Mazibuko v City of Johannesburg CCT (October 2009).

⁴⁰⁰ Cottle, E. and Deedat, H. (2002). The Cholera Outbreak: A 2000-2002 Case Study of the Source of the Outbreak in the Madlebe Tribal Authority Areas, uThungulu Region, KwaZulu-Natal. Durban: Health Systems Trust. And McDonald, D. (2002). *No Money, No Service*. In Alternatives. Volume 28 (2). Pp.16-22.

free communal water tap, but these were replaced in 1999 by prepaid meters. Residents had first to pay R50 for a card before they could purchase credits for water. However, the study found that many could not afford this fee and resorted to using unsafe water in nearby streams - resulting in cholera.⁴⁰¹

The cholera epidemic which began in 2000 in KwaZulu-Natal highlights some of the challenges municipalities face in their attempts at meeting their cost recovery obligations. For instance, the installation of prepaid meters and the charge of R50 per card were based on the assumption that if the majority of the approximately 1900 households purchased a prepaid card then the municipality would recover the costs of the provision, as well as provide for the maintenance of the water infrastructure. However, the lack of household subscriptions resulted in the underutilisation of prepaid meters which in turn translated into municipalities not being able to afford the maintenance costs. Besides the wastage of infrastructure investment, the outbreak of cholera resulted in increased health care costs for the province. Hospitals and clinics ran out of capacity and supplies.⁴⁰² McDonald estimated that the health cost associated with the cholera outbreak far outweighed the total amount that would have been spent on providing free water.⁴⁰³ He argues that the provision of free water would have cost the municipality and the province much less than the subsequent health care costs or the installation of expensive infrastructure which has since become redundant.⁴⁰⁴

In short, the debate on what constitutes appropriate cost recovery mechanisms remains unresolved. Municipalities experience widespread problems in recovering costs associated with basic service delivery. Many have inappropriate or inadequate administrative capacity to accurately bill or physically collect fees. In addition, non-payment of user fees remains high and is often dealt with punitively, regardless of consumers' ability to pay. In turn, the

⁴⁰¹ Cottle, E. and Deedat, H. (2002). The Cholera Outbreak: A 2000-2002 Case Study of the Source of the Outbreak in the Madlebe Tribal Authority Areas, uThungulu Region, KwaZulu-Natal. Durban: Health Systems Trust.

⁴⁰² Cottle, E. and Deedat, H. (2002). The Cholera Outbreak: A 2000-2002 Case Study of the Source of the Outbreak in the Madlebe Tribal Authority Areas, uThungulu Region, KwaZulu-Natal. Durban: Health Systems Trust.

⁴⁰³ McDonald, D. (2002). *No Money, No Service*. In Alternatives. Volume 28(2). Pp.16-22.

⁴⁰⁴ McDonald claims that Cholera costs the province \$0.5 billion per year in direct medical costs and \$3.6 billion per year in lost economic production, which he claims is more than the total amount that would be needed to provide water infrastructure to everyone in South Africa. McDonald, D. (2002). *No Money, No Service*. In Alternatives. Volume 28 (2). Pp.16-22.

outcome of inadequate cost recovery may further lead to municipalities opting for short-term solutions by providing inferior infrastructure to save on operating costs.

5.3.3 The Challenge of Free Basic Services

Perhaps the most challenging cost recovery issue for municipalities is the national mandate of free basic services that was introduced in 2003. This mandate essentially translates into municipalities being legally obliged to provide indigent households with access to 6kl of free water, basic sanitation and 50kWh of free electricity. (See Appendix 8 on Free Basic Service Levels). In 2003, the Department of Minerals and Energy published the Electricity Basic Services Support Tariff Policy Framework, commonly referred to as Free Basic Electricity Policy. This policy instructs municipalities to provide all indigent households with: (1) 50kWh of free grid electricity per month with concomitant blocked or stepped tariffs for electricity consumption beyond 50kWh;⁴⁰⁵ or (2) free non-grid electricity⁴⁰⁶ to all non-grid electrified households which is subsidised to a maximum of R48,00 per household.⁴⁰⁷

The national government's delegation of the free basic services mandate to local government meant the assignment of a new set of service delivery functions and responsibilities to municipalities. Firstly, municipalities had to identify all indigent households that qualify for free basic services; and based on indigency, they had to design differentiated tariffs for municipal services in order cross-subsidise service delivery.⁴⁰⁸ In other words, municipalities' had to implement cost recovery strategies that would enable them to afford the provision of free basic services to those deemed indigent.

The Indigent Support Policy (2005) suggests that municipalities apply progressive block tariffs. This means that municipalities must subsidise the minimum service level which is determined by national government. Currently, national policy determines the minimum service levels that municipalities must provide for indigents and only if indigents consume above the prescribed amount are municipalities entitled to charge and extract fees for consumption above that level.

⁴⁰⁵ Section 2.1 of the Electricity Basic Services Support Tariff Policy Framework (2003).

⁴⁰⁶ Non-grid electricity includes energy supplies such as Solar Home Systems.

⁴⁰⁷ Section 2.2 of the Electricity Basic Services Support Tariff Policy Framework (2003).

⁴⁰⁸ Section 97.1 (c) of the Municipal Systems Act (Act 32 of 2000).

According to the Department of Provincial and Local Government the term indigent means “lacking the necessities of life”, which it lists as: sufficient water; basic sanitation; refuse removal in denser settlements; environmental health; basic energy; health care; housing; food and clothing.⁴⁰⁹ Anyone who does not have access to these goods and services is considered indigent. According to StatSA, 52.2% of South Africans are regarded as poor and are without access to basic services and would therefore be deemed as indigent and entitled to free basic services.⁴¹⁰ However, the threshold of indigence varies depending on which datasets one consults. For example, the Department of Provincial and Local Government regards as indigent and hence entitled to free basic services those households which earn less than R1,100 per month,⁴¹¹ while the Department of Water Affairs and Forestry sets the qualification for free basic services at households which earn less than R800 per month.⁴¹² The Department of Minerals and Energy does not use household income as a criterion but rather consumption levels. In this case, households that consume less than 150kWh per month is regarded as poor and should be entitled to 50kWh per month.⁴¹³

With such widespread variation, it is obvious that the label ‘indigent’ is open to interpretation. This places the onus on municipal administrators to design an indigence policy appropriate to their socio-economic context. In addition to such variations, municipalities experience administrative problems. For example, determining the criteria for indigence; identifying who qualifies; verifying the validity of applications; designing an application process sensitive to the poor and illiterate; as well as designing a system of monitoring and evaluation. Compiling accurate and up-to-date indigence registers is administratively challenging for municipalities. The SACities Network reported that many

⁴⁰⁹ Department of Provincial and Local Government. (2005). Guidelines for the Implementation of the National Indigent Policy by Municipalities.

⁴¹⁰ These figures are used by the National Treasury. (2007). A National Poverty Line for South Africa. The figures are not separated according to the different categories of municipalities.

⁴¹¹ Community Agency for Social Enquiry (CASE). (2003). Municipal Cost Recovery in Four South African Municipalities. Research Document for the Built Environment Support Group (BESG). Bloemfontein: CASE.

⁴¹² Department of Water Affairs and Forestry. (2001). Free Basic Water: Implementation Strategy Document.

⁴¹³ Department of Minerals and Energy. (2003). Guideline for the Introduction of Free Basic Electricity.

municipalities continue to struggle with compiling registers of indigents.⁴¹⁴ Municipalities complain that compiling and maintaining indigence registers are costly and impractical.⁴¹⁵ The South African Local Government Association (SALGA) reported that few municipalities had completed such registers because they are time-consuming, complex and expensive.⁴¹⁶

Municipalities are faced with numerous challenges in identifying households which qualify. For example, defining what constitutes a household. Or what if more than one household resides in one dwelling? What about child-headed households? Or is low consumption an indicator of indigence? Does it apply to landowners and tenants? Or what about properties that have a main structure as well as other informal settlement structures on the same property?⁴¹⁷

The national directive to supply free basic services to those regarded as indigent has translated into local implementation challenges. For example, many municipalities lack the capacity to verify the application details.⁴¹⁸ Verification includes the need to visit households or relying on the ward councillors and ward committees to verify the respective applications. As the chapter on political decentralisation highlighted, ward councillors or committees are not very effective or non-partisan and this may result in some households being excluded deliberately or inadvertently.

The national mandate of free basic services requires municipalities to design an administratively affordable and sustainable service delivery approach.⁴¹⁹ Some adopt a targeted approach which requires poor households to apply.⁴²⁰ This approach includes

⁴¹⁴ SACities. (2005). Conference Resolves to Enhance Provision of Free Basic Services Available at <http://www.sacities.net/2005/jul27>.

⁴¹⁵ SACities. (2005). Conference Resolves to Enhance Provision of Free Basic Services Available at <http://www.sacities.net/2005/jul27>.

⁴¹⁶ Hemson, D. (2004). The Right to Water. Report submitted to the South African Human Rights Commission.

⁴¹⁷ National Council of Provinces. (2004). Report of the Select Committee on Local Government and Administration.

⁴¹⁸ Department of Provincial and Local Government. (2005) Guidelines for the Implementation of the National Indigent Policy by Municipalities.

⁴¹⁹ Arntz, T., Bekker, K., and Botes, L. (2003) *Strategies for Indigent Policy Formulation and Implementation in Urban Settlements in South Africa*. In Journal of Public Administration. Volume 38(22). Pp. 102-117.

⁴²⁰ For example the Nelson Mandela metropolitan municipality (Port Elizabeth) and the Witzenberg local municipality (Ceres).

drafting an indigence register and places the onus on municipalities to verify each application. However, many municipalities find this impractical and too costly to administer. It also requires a system of constant monitoring and evaluating beneficiaries' indigence status in order to determine whether a household's status has changed since it applied and it is therefore no longer entitled to free basic services.⁴²¹

Some municipalities avoid the administrative costs associated with the targeted approach by using more loosely defined criteria. For example, municipalities apply a blanket or universal approach in which all households receive a free portion of water and electricity, followed by progressive block-tariffs to subsidise the free portion of the service.⁴²² Other municipalities use a self-targeted approach. This entails the provision of free basic services to households which are within a specified property-value range and/or consume less than the free basic services amounts.⁴²³ In the eThekweni metropolitan municipality (KwaZulu-Natal), for example, indigent households which consume more than the free basic services limit start paying a step-tariff rate, which is higher than regular users.⁴²⁴

Another approach by municipalities to provide free basic services may involve delineating geographical areas where households are predominantly poor, and then providing free basic services for the area as a whole.⁴²⁵ The trade-off here is to balance the administrative costs saved by the proportion of households which free-ride. However, it can cause such areas to become more densely populated by spurring the migration of other households to those areas, or it can also stigmatise the area for being poor.

Regardless of the administrative approaches to free basic service delivery, the financial burden falls predominantly on local government. The financial challenge for municipalities

⁴²¹ Arntz, T., Bekker, K., and Botes, L. (2003) *Strategies for Indigent Policy Formulation and Implementation in Urban Settlements in South Africa*. In Journal of Public Administration. Volume 38(22). Pp. 102-117.

⁴²² For example the Cape Town metropolitan municipality and the Buffalo City municipality. SACities Network. (2007). State of Cities Finances Report.

⁴²³ For example the eThekweni metropolitan municipality (Durban) and the Manguang municipality (Bloemfontein). SACities Network. (2007). State of Cities Finances Report.

⁴²⁴ eThekweni Tariff and Municipal Surcharge Policy. Available at www.durban.gov.za/durban/government/.../tariff-policy-2009-2010.

⁴²⁵ Arntz, T., Bekker, K., and Botes, L. (2003) *Strategies for Indigent Policy Formulation and Implementation in Urban Settlements in South Africa*. In Journal of Public Administration. Volume 38(22). Pp.102-117.

is that free basic services are essentially subsidies, and, furthermore, revenue will not be generated by its beneficiaries. In other words, rolling-out free basic services increases the overall operating expenditures of municipalities, but without additional revenue collection.

Municipalities are increasingly faced with demands for higher amounts of free basic service levels. The critique is that 50 free kWh of electricity per household per month only runs a light bulb and a few small appliances, while 6kl of water per household per month is regarded as too little due to the relatively high average number of occupants per household. Calls are increasingly made for 150kWh and 20kl per household per month, as well as for the replacement of pit latrines with waterborne sanitation.⁴²⁶

The FFC aptly reflects on the current political debates on what constitutes adequate quality and quantity of basic services. It recognises that many reject the notion that 6kl of free basic water and 50kW of free basic electricity are adequate, but argues that:

[I]f standards were set that everyone could agree were desirable from a constitutional, equity and economic point of view, comparison of these standards with what is being provided currently would yield a large 'expenditure deficiency'.⁴²⁷

In other words, free basic services go beyond the practical challenges of recovering costs associated with the provision of basic services, but the obligation to provide these very services free or at highly subsidised prices may well threaten the financial viability of municipalities.⁴²⁸ All categories of municipalities are challenged by the financial burden of providing free basic services. The argument here is that Category B municipalities experience added cost recovery challenges because of the two-tiered local government system, as well as the transfer of their basic service delivery authority to Category C municipalities: this is a consequence of the Municipal Structures Amendment Act (2000).

⁴²⁶ Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model.

⁴²⁷ Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model. Page 18.

⁴²⁸ This 'threat' highlights the importance of appropriate fiscal arrangements between the national fiscus and local governments. This is the domain of fiscal decentralisation, and the focus of the next chapter.

5.4 Challenges of Cost Recovery Facing Category B Municipalities

Category B municipalities face a number of cost recovery challenges that appear to have been overlooked. There is a general expectation that local municipalities have the capacity to implement cross-subsidisation programmes. However, this section will show that local municipalities are faced with diminishing avenues for cost recovery. This limits their ability to cross-subsidise service delivery. It will show that supposed sources of income such as service delivery surcharges and property rates are limited. This has been exacerbated by the Municipal Structures Amendment Act's transfer of basic service delivery authority from Category B to Category C municipalities, severely depleting local municipalities' cost recovery potential, and hence lessening the former's administrative autonomy.

5.4.1 Cross-Subsidisation

All municipalities are expected to independently fund the provision of basic services, including free basic services. The National Treasury claims that municipalities can do so by cross-subsidising service delivery.⁴²⁹ However, cross-subsidisation assumes that municipalities have the revenue at hand to spend in those areas where infrastructure is needed.

District municipalities used to be able to collect Regional Services Council (RSC) levies. RSC levies were business taxes paid to district and metropolitan municipalities. These levies were based on company payrolls and turnover as well as charges on the provision of water and electricity. The RSC levy was subsequently abolished in June 2006 for a number of reasons, partly because of the extensive administration and collection costs to municipalities as well as the high incidents of evasion. Moreover, the argument was often touted that RSC levies were taxes on staff or labour which disadvantaged labour-intensive firms, which thus could exacerbate unemployment.⁴³⁰ Prior to its abolition, the RSC levy constituted 7% of municipalities' own revenue.⁴³¹ However, the division of national revenue to local

⁴²⁹National Treasury. Budget Review: 2005.

⁴³⁰Interview with Treasury Official. (KwaZulu-Natal Department of Treasury). Pietermaritzburg. 27 November 2008.

⁴³¹National Treasury. Budget Review: 2005.

government for the 2007/08 financial year increased less than 1%, signalling, in effect, a sharp decrease in local government revenue from taxation.

The previous chapter highlighted that the demarcation of municipal boundaries in 2000 resulted in the creation of large local municipalities, which now include vast portions of underdeveloped land. Municipalities are expected to fund the provision of basic services to households which reside in outlying areas where poverty is high and infrastructure is limited. This places a strong financial burden on municipalities, and the potential for recovering costs is limited given the prevalence of poverty.⁴³² The national directive is to cross-subsidise service delivery through surcharges.

A surcharge on a municipal service is a charge levied by a municipality in addition to the fee or tariff charged for the provision of the service. Surcharges are normally generated from the provision of bulk services, such as water and electricity reticulation, which are aimed at providing additional revenue to municipalities for subsidising other municipal activities where user fees or charges are impossible, minimal or impractical.

Surcharges which are built into basic services are contentious. Many argue that it is unethical to include a profit margin in the provision of basic services. Yet their criticism is not accompanied by any alternatives.⁴³³ The Municipal Systems Act (2000) defines surcharges as fundamental to cross-subsidisation and necessary for the promotion of local economic development.⁴³⁴ The Act states that the surplus generated can then be utilised as: an appropriation to capital reserves; in differentiated rates structures; and general services; and towards subsidising free basic services to indigent households.⁴³⁵

Water and electricity are often major sources of extra income for municipalities. This surplus income enables municipalities to subsidise service delivery to poorer areas. Without a surplus, households in poorer areas would pay more for services. In theory, according to the economies of scale, those who consume more are charged less as the costs to the municipality

⁴³² Parnell, S. and Pieterse, E. *Developmental Local Government: The Second Wave of Post-Apartheid Urban Reconstruction*. In *Africanus*. 1999. Volume 29 (2). Pp.68-85.

⁴³³ See for example McDonald, D. and Pape, J. (2000). The Crisis of Service Delivery in South Africa. Pretoria: Human Sciences Research Council Publishers.

⁴³⁴ Section 74 of the Municipal Systems Act. (Act 32 of 2000).

⁴³⁵ Section 74 of the Municipal Systems Act. (Act 32 of 2000).

are less. The converse is then that those who utilise less are charged a larger per-unit base.⁴³⁶ The reason is that the costs of establishing and maintaining infrastructure are already included in service charges, so when there are fewer consumers, fewer funds are collected for operational costs.

Municipalities must pursue full cost recovery. But the important distinction is that poor households must have access to basic services through:

- (i) *tariffs that cover only operating and maintenance costs;*
- (ii) *special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or*
- (iii) *any other direct or indirect method of subsidisation of tariffs for poor households.*⁴³⁷

This is generally done through the application of progressive block tariffs, which is regarded as a cost recovery measure that has the potential to cross-subsidise service delivery to the poor. Besides cross-subsidisation, progressive block tariffs are also considered to eliminate wastage or at least penalise high consumption, thereby promoting sustainable development. Progressive block tariffs enable municipalities to make the initial levels of consumption more affordable, or free, while progressively charging higher rates as consumption increases. In theory, progressive block tariffs have the potential to balance the need for full cost recovery with the provision of free basic services. However, in search of private investment, municipalities often offer water and electricity to industry at heavily subsidised prices, in the hope of making their cities attractive for private capital investment.⁴³⁸ The result is that the pressure of additional surcharges in the interest of cross-subsidisation is not geared at high consuming industries, but rests with middle-class households.

While block tariffs are certainly one way of cross-subsidising, Bekker *et al* point out that block tariffs are not very effective in situations where consumption remains low as the first ‘block’ is normally heavily subsidised in order to encourage consumption at a higher service scale.⁴³⁹ Many local municipalities have made substantial progress in eradicating service

⁴³⁶ Interview with Finance Officer. (Msunduzi Municipality). Pietermaritzburg, 28 August 2008.

⁴³⁷ Section 74.2 (c) of the Municipal Systems Act. (Act 32 of 2000).

⁴³⁸ Interview with Member of the Pietermaritzburg Chamber of Commerce. 12 June 2007.

⁴³⁹ Bekker, B., Eberhard, A., Gaunt, T. and Marquard, A. (2008). A. *South Africa's Rapid Electrification Programme*. In *Energy Policy*. Volume 36. Pp. 3115-3127.

delivery backlogs in areas regarded as poor, but the national mandate of free basic services means that there is little or no potential for cost recovery.⁴⁴⁰

Bekker *et al* argue that it can no longer be claimed that electrification generates surpluses.⁴⁴¹ Recent studies show that despite free basic electricity, consumption remains low because of continuing issues around affordability. Therefore, the assumption that consumption by electrified households would increase to a level where the operational and capital costs could be recovered, is misguided.⁴⁴²

The national mandate of free basic services has devolved onerous administrative obligations to local government. For example, local municipalities have the responsibility for compiling and maintaining indigence registers, while the surplus generated from water and electricity goes to district municipalities. For most local municipalities the national instruction to provide free basic services is complicated by the absence of service delivery infrastructure. This means that such local municipalities must put the necessary basic service delivery infrastructure in place so that indigent households cannot access free basic services. The challenge for these municipalities is to find avenues where surcharges can be levied as a revenue source to assist in meeting their service delivery expenditure obligations. However, such surcharges do increase the tax burden on consumers. The Minister of Finance prescribes the national norms and standards for imposing municipal surcharges, while the Municipal Systems Act prescribes the manner in which fees, charges or tariffs are levied.

As the previous chapter explained, the Municipal Structures Amendment Act transferred the authority to provide water, sanitation and electricity from Category B municipalities to Category C municipalities. The immediate implication of the Act was that it would result in a drastic cutback of their cost recovery potential. As service providers (as opposed to service authorities) Category B municipalities would no longer derive surpluses from the sale of bulk services such as water and electricity. In addition, the Municipal Structures Amendment Act transfers the power to impose and collect taxes, levies and duties in relation to the provision of basic services from local municipalities to district municipalities. Service fees have always

⁴⁴⁰ This will be explored in more detail in subsequent chapters.

⁴⁴¹ Bekker, B., Eberhard, A., Gaunt, T. and Marquard, A. (2008). *A. South Africa's Rapid Electrification Programme*. In *Energy Policy*. Volume 36. Pp. 3115-3127.

⁴⁴² Bekker, B., Eberhard, A., Gaunt, T. and Marquard, A. (2008). *A. South Africa's Rapid Electrification Programme*. In *Energy Policy*. Volume 36. Pp. 3115-3127.

been local municipalities' main source of income. The rationale for the Amendment Act was never made clear. Some claim that it was intended to allocate more cost recovery potential to district municipalities.⁴⁴³ It supposedly aimed at empowering district municipalities by increasing their revenue generating capacity. However, it may have increased district municipalities' access to resources, but in the process lessened access to resources by local municipalities.

In most cases, however, local municipalities continue to provide basic services on behalf of the district municipalities since the latter have limited capacity. The problem, however, is that there is no formal cost recovery mechanism, posing a real possibility of unfunded mandates becoming devolved from district to local municipalities.⁴⁴⁴ The reality remains that any such authority remains provisional.

5.4.2 Property Rates

The consequence of the Municipal Structures Amendment Act (2000) is that local municipalities now depend primarily on property rates as their major source of own revenue. The Municipal Property Rates Act (Act 6 of 2004) is a relatively new policy and theoretically devolves authority to municipalities to collect additional revenue. Property rates are a general local tax or levy which municipalities may charge, which is not in return for a specific benefit but is rather for a set of general services such as municipal roads and street lighting. The residential property tax is administered by local governments based on an assessment of the value of land and improvements thereon. It is a type of wealth or benefit charge to land-owners as the primary beneficiaries from most local services.⁴⁴⁵

The national minister responsible for local government prescribes the rates and ratios distinguishing between business, commercial, industrial, mining or residential properties. This has been an issue of contention. For example, according to policy, the rate on business, commercial, industrial and mining property may not be more than double that on residential

⁴⁴³ Steytler, N. (2003). *District Municipalities: Giving Effect to Shared Authority in Local Government*. In Law, Democracy & Development. Volume 7(3). Pp. 1-26.

⁴⁴⁴ Smith, J. and Green, J. (2005). *Water Service Delivery in Pietermaritzburg: A Community Perspective*. In Water SA Volume 31(4). Pp. 435-488.

⁴⁴⁵ Department of Provincial and Local Government. (2005). Guidelines on Rates Act.

property. The rate on agricultural property may not be more than a quarter of the rate on residential property, while the rate on public benefit organisation property may not be more than a quarter of the rate on residential property.⁴⁴⁶

With regard to local government's supposed authority to levy property rates, the contention is that the national Minister has executive authority to cap the rate on state-owned property and public service infrastructure. In other words, the determination of local user fees rates is a national prerogative with implications for the autonomy of local government. The current Property Rates Act stipulates that rates on state-owned property and public service infrastructure cannot be more than a quarter of the rate on residential property.⁴⁴⁷ In addition, the *Guidelines on Rates Act (2005)* makes no distinction between the types of state-owned property: in other words, whether they provide local services such as clinics, police stations and courts; or whether they offer district-wide services such as prisons and hospitals; or whether they provide provincial or national services, such as defence and provincial or national departmental offices. Rates for parastatals are altogether absent.⁴⁴⁸ The result is that a state-owned office block is only charged a quarter of what a business office block is charged - for exactly the same level of services. State-owned property is grouped in the same rates categories as agricultural land and public service infrastructure, while the former consumes and benefits relatively more from widespread municipal services.⁴⁴⁹

Proposed rates ratio are also accompanied by rebate formulas. For example:

- 7.5% rebate, if there are no municipal roads next to the property.
- 7.5% rebate, if there is no municipal sewerage to the property.
- 7.5% rebate, if there is no municipal electricity to the property.
- 20% rebate, if water is not supplied by the municipality.
- 7,5% rebate, if there is no refuse removal that is provided by the municipality.⁴⁵⁰

The critique is that the ratios of rates take away the power of municipalities to determine and adjust their property taxes, since the same formula applies across municipalities despite their

⁴⁴⁶ Department of Provincial and Local Government. (2005). Guidelines on Rates Act.

⁴⁴⁷ The Local Government Municipal Property Rates Act. (Act 6 of 2004).

⁴⁴⁸ Department of Provincial and Local Government. (2005). Guidelines on Rates Act.

⁴⁴⁹ Department of Provincial and Local Government. (2005). Guidelines on Rates Act.

⁴⁵⁰ Department of Provincial and Local Government. (2005). Guidelines on Rates Act.

different growth and development challenges.⁴⁵¹ Increases are based on the annual consumer price index (CPI), which do not reflect the fluctuation of property values. Municipalities claim that the caps on state-owned property will force them to shift the tax burden to residential properties. In addition, some municipalities (like Johannesburg) want to distinguish between residential land ownership and sectional title owners and offer the latter a rebate to encourage high density development. While, in other cases, municipalities want to levy higher taxes on vacant land to encourage development.⁴⁵²

In theory, the Minister is merely regulating the imposition of taxes by capping the rates for nonresidential property; however, the low ratios set for state-owned property as well as only allowing inflationary increases limits autonomous revenue powers of municipalities that was intended by the devolution of property rates taxes to local government. For a municipality such as Msunduzi, the capping of rates on state-owned property has financial implications since it includes Pietermaritzburg, which is the capital city of the KwaZulu-Natal province, and therefore houses the provincial legislature and the majority of provincial government departments. Such municipalities can therefore not use the property rates tax as a means of cross-subsidisation or to collect additional revenue for increased service delivery.

In short, while in legal terms administrative authority for cost recovery has been devolved to local government, the parameters prescribed by the national executive limit local government's autonomy and their discretionary powers in determining their own local tariff structures. The outcome is that municipalities' legal authority of cost recovery becomes predominantly a delegated function.

Conclusion

This chapter critically analysed the devolution of the cost recovery function to municipalities. It showed that cost recovery poses numerous challenges for municipalities in general, as well as for Category B municipalities in particular. The general literature on decentralisation equates the devolution of cost recovery responsibilities to lower levels of government as an

⁴⁵¹ Visser, R. (2008). Rates Ratio Shock Looms For City. (Available at http://www.sacities.net/2008/7march_rsc).

⁴⁵² Visser, R. (2008). Rates Ratio Shock Looms For City. (Available at http://www.sacities.net/2008/7march_rsc).

indication of widespread decentralisation. Transferring the function of cost recovery, the literature assumes, represents an increased devolution of powers. In other words, decentralisation is evident when the devolution of service delivery powers and functions to local governments is supported by local financial autonomy to raise and collect their own revenue.

This chapter has illustrated that cost recovery will continue to be a daunting task for municipalities as long as they are faced with growing service delivery responsibilities while revenue sources remain limited. Some sources are limited due to low levels of payment; others because of national legislation such as capping levy rates on property; or through the removal of source of own revenue (such as the RSC levies); or uncertainty (such as the transfer of bulk service delivery to district municipalities). These realities are indications of local government being granted limited authority and means to raise and collect their own revenue, thereby severely limiting local financial autonomy. Furthermore, the tentative devolution of water and electricity authority to local municipalities, combined with the limited discretion on property rates, the removal of the RSC levies, and the uncertainty with regard to the establishment of REDs, diminish the local municipalities' capacity for increased cost recovery.

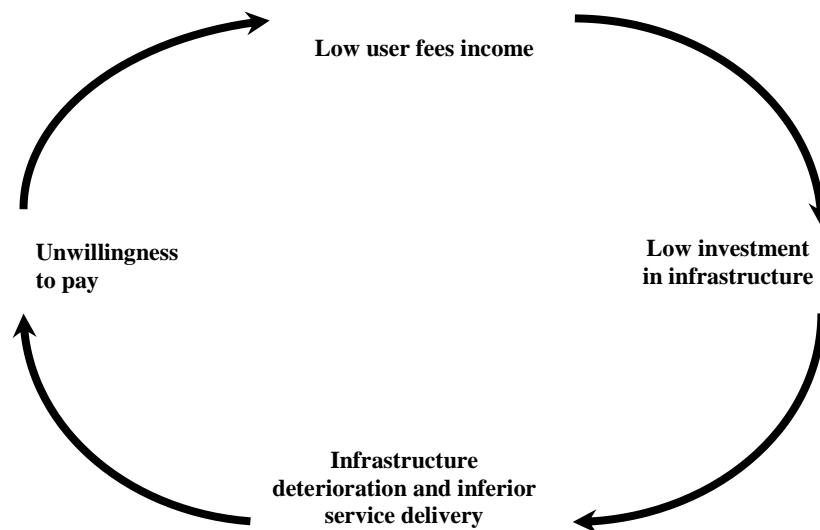
Based on the current basic service delivery policy framework in South Africa, one could conclude that municipalities have been authorised to implement full cost recovery measures. But the important *proviso* is the inclusion of free baseline services. This requirement is financially and administratively onerous for municipalities because of widespread indigence. This is made even more complex by the national government's prerogative to determine property rates together with their authority to determine and remove potential sources of revenue. This results in minimising municipalities' full cost recovery potential.

The problems facing cost recovery in municipalities go beyond the practical challenges of recovering costs. They are exacerbated by the obligation to provide the infrastructure necessary for the provision of basic services free or at highly subsidised prices. This chapter has shown that the national government's claims that local municipalities have adequate cost recovery capacity is flawed. Prior to the Amendment Act, the main source of income of local municipalities was the sale of bulk services. Avenues for cost recovery now rely on municipalities' ability to collect property rates. However, national government restrictions

minimise the authority of municipalities over local sources of revenue, thus further limiting avenues for cost recovery.

This chapter has illustrated that cost recovery is integral to the viability of municipalities and the sustainability of service delivery. It has argued that without adequate cost recovery, municipalities are unable to finance or maintain service delivery. The challenge of cost recovery is illustrated in Figure 5.1. It shows the intrinsic relationship between the extent of revenue collection and the capacity to provide infrastructure and/or service delivery sustainably. It shows that inadequate income results in low infrastructure investment, which in turn results in the deterioration of infrastructure. The consequence of weak infrastructure is inferior or poor service delivery and the cycle repeats itself in that poor services levels mean inadequate income - and the challenge of cost recovery cycle is perpetuated.

Figure 5.1: Cycle of Inadequate Cost Recovery



The National Treasury's assumption is that better cost recovery strategies will provide more funding for service delivery investments such as technical and human capacity. This in turn will improve service delivery which will result in higher levels of service payments, which will make funds available for infrastructure investment and maintenance. However, as this chapter has highlighted, such an interpretation ignores a number of fundamental factors, such as local municipalities' limited avenues for cost recovery, as well as the extent of indigence. Even if municipalities were better at cost recovery and even if service delivery levels were

improved or of a higher quality, this would not necessarily translate into higher income given the prevalence of indigence and the extent of service delivery backlogs.

Put bluntly, the challenges facing municipal service delivery are compounded by municipalities' limited cost recovery potential. Coupled with this is the national directive to provide certain basic services free to poor households while simultaneously expanding and maintaining infrastructure in a socio-economic context characterised by rapid urbanisation, unemployment and limited economic growth. The problem of indigence is one that in all likelihood will continue, while the lack of sufficient sources of revenue at local government level will continue to pose service delivery implementation problems.

The Auditor-General and FFC argue that the provision of basic services in situations where the levels of poverty are high, and cost recovery low, or non-existent, will not only increase the threat to the financial viability of municipalities, but also risks the sustainability of service delivery as well as threatens the sustainability of local government as an autonomous sphere of government.⁴⁵³

The implications of limited cost recovery places severe limitations on local government's ability to eradicate existing service delivery backlogs, as well as sustain service delivery to those households that have access to basic services. It has been shown here that the fiscal capacity of municipalities is insufficient relative to their administrative functions and responsibilities. Theories in the academic literature suggest that there can be no devolution of local government autonomy without adequate local fiscal capacity. In legal terms, it appears as if local government has financial autonomy to recover fees associated with the provision of basic services. However, this chapter concludes by arguing that local governments are unable in practical terms to recover adequate revenue. Under such circumstances, political and administrative local autonomy diminishes.

The conclusion reached here is that the devolution of the cost recovery function to local government - a sphere of government that is regarded as insufficiently resourced as well as

⁴⁵³ Financial and Fiscal Commission. (2007). A Grant Scheme for the Progressive Realisation of Constitutionally Mandated Basic Services in South Africa: A Simulation Model.

lacking the capacity to design and implement appropriate cost recovery practices - is by default fraught with implementation problems.⁴⁵⁴ Municipalities' general lack of own revenue sources limits their financial capacity to cross-subsidise free basic services. Without financial capacity, devolution is meaningless.

The next chapter focuses on the system of intergovernmental fiscal transfers and highlights the dependence of municipalities on fiscal transfers, and considers the implication of such dependence on local autonomy. The argument that is mounting in this study is that decentralisation of the basic service delivery mandate to municipalities threatens their financial viability. This 'threat' highlights the importance of appropriate fiscal arrangements between the national fiscus and local governments. This is the domain of fiscal decentralisation, which is the focus of the next chapter.

⁴⁵⁴ SACities Network. (2007). State of Cities Finances Report.

CHAPTER SIX

FISCAL DECENTRALISATION

Introduction

This chapter is organised into four parts focusing on different but related broad themes. The first three parts of the chapter describe the current system of fiscal decentralisation in South Africa. It commences by identifying some of the objectives of fiscal decentralisation and couches these against the historical context of fiscal intergovernmental relations in South Africa. The second part considers the legislative framework and the assignment of fiscal powers and authority to local government under the new democratic dispensation. The third part describes the current system of revenue sharing by explaining the national division of revenue, focusing particularly on the annual budgeting process and the fiscal transfer of national revenue through a system of conditional and unconditional grants.

The fourth and final part of this chapter provides a critical analysis of the system of fiscal decentralisation in South Africa. It does so by examining the allocation of national revenue to local government. The argument that will be presented here is that the nature of both the unconditional and conditional grants is not conducive to furthering local fiscal autonomy. On the contrary, it will be shown that the Equitable Share grant is far from being an ‘unconditional’ grant. This will be examined by critically analysing the relationship between the Municipal Infrastructure Grant and the Equitable Share formula.

Fiscal decentralisation in essence refers to the allocation of fiscal powers and functions to lower levels of government. The literature claims that the nature of fiscal decentralisation in any particular country is a key indication of local government autonomy in general.⁴⁵⁵ It is argued, for example, that the manner in which nationally raised revenue is divided across different levels of government, or the degree of variation between sub-national units of

⁴⁵⁵ Bahl, R. and Smoke, P. (2003). Restructuring Local Government Finance in Developing Countries: Lessons from South Africa. Cheltenham: Edward Elgar Publishing. And Shah, A. (2004). *Fiscal Decentralization in Developing and Transition Economies: Progress, Problems and Promise*. World Bank Policy Research Working Paper (3282). Washington: World Bank.

government's revenue capacity and expenditure responsibilities, indicates the extent of local fiscal autonomy.⁴⁵⁶

This chapter looks at local government in a system of intergovernmental fiscal relations by examining the legal framework of fiscal decentralisation, focusing particularly on the system of dispersing funds across the spheres of government, and the implications thereof on local fiscal autonomy. One of the questions posed here is to what extent fiscal authority is devolved to local government. It will be seen that the nature of intergovernmental fiscal policy-making, fiscal transfers and the conditionalities attached to these transfers point to limited local fiscal autonomy. Deconcentration, or at best delegation, appears to be the more prominent form of fiscal decentralisation, and not devolution as envisaged by the Constitution.

The system of intergovernmental fiscal relations in South Africa is highly centralised. The advantage for national government is that widespread central control over the dispersal and expenditure of funds to local government enables national government to influence the budget priorities in municipalities. The disadvantage for municipalities is that under tight central control, municipalities have little financial decision-making authority which makes municipalities basic service providers as opposed to basic service authorities. In other words, municipalities become the service delivery agents for national government as opposed to autonomous local authorities accountable to their constituencies for basic service delivery.

Implementing fiscal decentralisation is not straightforward in South Africa. The apartheid legacy of unequal development and inequitable access to revenue sources has created the need for financial redistribution and stability. The literature argues that such objectives are better served under a centralised system of governance.⁴⁵⁷ In such a case, there is a need for

⁴⁵⁶ Bahl, R. and Smoke, P. (2003). Restructuring Local Government Finance in Developing Countries: Lessons from South Africa. Cheltenham: Edward Elgar Publishing. And Shah, A. (2004). *Fiscal Decentralization in Developing and Transition Economies: Progress, Problems and Promise*. World Bank Policy Research Working Paper (3282). Washington: World Bank.

⁴⁵⁷ For example Bahl, R. and Smoke, P. (2003). Restructuring Local Government Finance in Developing Countries: Lessons from South Africa. Cheltenham: Edward Elgar Publishing. And Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

central control over local fiscal matters; and the redistribution or equalisation of resources is a fiscal function best served by national government.

Based on the legal framework of South Africa, however, there are limits to fiscal centralisation. According to the Constitution, the objective of national government is to financially assist and support municipalities so that they can ‘autonomously’ and ‘independently’ meet their administrative powers and responsibilities.⁴⁵⁸ One of the objectives of this chapter is to identify elements of both centralisation and decentralisation in the institutional framework for intergovernmental fiscal relations. It critically investigates whether elements of centralisation are aimed at ‘assisting’ municipalities or ‘controlling’ municipalities, in particular whether central fiscal control over local financial matters is directed at assisting and supporting municipalities to provide basic services ‘autonomously’ and ‘independently’.

The previous chapter demonstrated that the capacity of municipalities to meet its constitutional mandate of providing basic services depends on the availability of resources. At this point in time, there is no local municipality in South Africa that is able to fulfil its constitutional mandate of providing basic services without any national or provincial financial support.⁴⁵⁹ However, this does not mean that there can be no devolution of fiscal authority. It means that for the time being, local governments will remain dependent on national government fiscal support. What is more telling is the nature or conditions attached to such intergovernmental fiscal support. How prescriptive is it? Is it conducive to improving local government autonomy, or are intergovernmental transfers indicative of increasing central control?

This chapter will commence by exploring what the constitutional obligations of fiscal decentralisation in South Africa are, and then consider how this has been put into effect by exploring the assignment of fiscal power and authority to the different spheres of government. It is particularly concerned with how the division of revenue takes place, and what consideration is given to local government. One of the key questions is whether or not intergovernmental fiscal transfers advance local autonomy in South Africa. This will be

⁴⁵⁸ Section 40 of the Constitution of South Africa. (Act 108 of 1996).

⁴⁵⁹ SACities Network. (2007). State of Cities Finances Report.

explored by analysing in some depth the nature of the current grant allocations and the inherent limitations this places on municipalities' service delivery autonomy.

6.1 The Objective of Fiscal Decentralisation in South Africa

The literature equates fiscal decentralisation with the devolution of financial autonomy.⁴⁶⁰ Financial autonomy implies sub-national self-sufficiency, but this is proving to be impossible in South Africa for a number of reasons. For one, although local government transformation was officially finalised in December 2000 with the completion of the demarcation process, it by no means settled the functional and financial arrangements between national, provincial and local government. On the contrary, it highlighted the severity of municipalities' fiscal problems.

In theory, fiscal decentralisation confers the necessary power on democratically elected sub-national levels of government to collect and spend own revenue in line with their respective responsibilities for expenditure and revenue-making capacity.⁴⁶¹ However, in South Africa this is complicated since post-apartheid municipalities were not created in a neutral context; they inherited diverse administrative and financial weaknesses. As such, fiscal decentralisation entails more than devolving financial autonomy to sub-national governments to raise and spend own revenue. It is also about redressing the financial disparities among municipalities across South Africa by revising how revenue should be dispersed among the different spheres of government in order to eradicate fiscal inequalities created by apartheid.

The Constitution does not explicitly specify the framework of fiscal decentralisation. (See Appendix 9). However, it does state that the assignment of political and administrative powers and functions to sub-national levels of government must be accompanied by the transfer of adequate fiscal authority. Parliament must "ensure that the provinces and

⁴⁶⁰ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

⁴⁶¹ Bahl, R. (1994). *Fiscal Decentralization and Intergovernmental Transfers in Less Developed Countries*. In Publius. Volume 24(1). Pp. 1-19. And Oates, W. (2005). *Toward A Second-Generation Theory of Fiscal Federalism*. In International Tax and Public Finance. Volume 12. Pp. 349-373. And Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

municipalities are able to provide basic services and perform the functions allocated to them.⁴⁶²

One can infer, therefore, that the objective of fiscal decentralisation is to assist local governments to fulfil their constitutional mandate of providing all South Africans with access to basic services. As such, a system of fiscal decentralisation must ensure that municipalities have the necessary fiscal powers and authority to provide basic services and perform the functions allocated to them by the Constitution.

The redrawing of municipal boundaries in 1996 and in 2000 may have resulted in politically more representative local authorities, but it did not create financially viable ones. This was, however, inevitable as the objective of demarcation was to equalise or eradicate the vast disparities that existed in municipal financial capacity. The creation of wall-to-wall municipalities was aimed at amalgamating municipalities with revenue generating capacity with municipalities without such capacity. As the Demarcation Board stated:

*wherever possible, current TLCs and TRCs and/or other areas should be combined with a view to realising fiscally sustainable units, with 'weaker' areas being paired with 'stronger' areas so as to achieve a sharing of existing or potential resources.*⁴⁶³

As previous chapters have indicated, this had a particular impact on Category B municipalities since these newly demarcated areas quadrupled in geographical size, which often resulted in the incorporation of large tracts of underdeveloped land, areas that had been previously located in homelands or self-governing territories which had no or limited tax bases.

While Category C municipalities are predominantly rural, they are less populated and service delivery is often provided by Category B municipalities. Category A municipalities also increased in population size and became densely populated, but compared to Category B municipalities, Category A ones had a stronger revenue base and some basic infrastructure network. The immediate challenge was and continues to be how a system of intergovernmental revenue sharing can address the weak, inoperable and diverse financial systems of the different municipal categories.

⁴⁶² Section 214.2 (d) of the Constitution of South Africa. (Act 108 of 1996).

⁴⁶³ Municipal Demarcation Board. (1999). The Board's Approach to the Determination of Category B Municipalities. Page 6.

A first undertaking was to change the centralised monetary transfer system between the three spheres of government whereby national funds were allocated directly to metropolitan municipalities whereas funds to regional and local councils were channelled through provincial governments.⁴⁶⁴ The practice of transferring funds to provinces, which in turn had to allocate funds to Regional Councils, proved to be unwieldy and inoperable.⁴⁶⁵ Provinces were criticised for indirectly rewarding financially poor performing Regional Councils by granting them more funds the following financial year.⁴⁶⁶ The Financial and Fiscal Commission felt that provinces tended to allocate funds on the basis of ‘emergency’ support, or according to the historical pattern of expenditure of the particular council. It stated in 1997 that “the current intergovernmental transfers from the national government to local authorities... are unsatisfactory because the criteria on which such grants are made are subject to doubt”.⁴⁶⁷

This system was open to abuse and exploitation since the funding allocation was not based on a particular framework. Regional Councils were never sure how much and when they would receive funding. This in turn meant that local councils would not know how much Regional Councils would transfer to them. This unpredictability made accurate budgeting difficult for both types of municipalities, and municipalities found themselves dependent on the will of provinces.⁴⁶⁸ The recommendation then was that “[E]quity between the second and third

⁴⁶⁴ As shown in Chapter Three on political decentralization, Regional Councils were operational between 1994 and 2000. They were a rather haphazard amalgamation of previous Joint Services Boards, Black Local Authorities, and in some provinces (especially in KwaZulu-Natal and the Eastern Cape) large traditional authorities. In 2000, when the local government demarcation process was completed, Regional Councils were replaced by District Councils.

⁴⁶⁵ Municipal Demarcation Board (2005). Review of the Adjustment of District Functions to Local Municipalities.

⁴⁶⁶ The Financial Fiscal Commission. (1997). The Allocation of Financial Resources between the National and Provincial Governments: Recommendations for the 1996/97 Fiscal Year. And Whelan, P. (2002). *Local Government Finance Reform*. Pp. 233-251. In Parnell, S., Pieterse, E., Swilling, M. and Wooldrige, D. (2002). Democratising Local Government: The South African Experience. Cape Town: University of Cape Town Press.

⁴⁶⁷ The Financial Fiscal Commission. (1997). The Allocation of Financial Resources between the National and Provincial Governments: Recommendations for the 1996/97 Fiscal Year.

⁴⁶⁸ The Financial Fiscal Commission. (1997). The Allocation of Financial Resources between the National and Provincial Governments: Recommendations for the 1996/97 Fiscal Year.

levels of government can be promoted only in a dispensation where no finance is made available on an *ad hoc* basis.”⁴⁶⁹

The chapter on political decentralisation illustrated that Regional Councils were large bodies, some with more than 300 councillors, and were criticised for being incapable of determining the allocation of appropriate funds to local municipalities.⁴⁷⁰ In addition, the system of political appointments to the Regional Councils lacked electoral accountability and transparency, making the whole system of intergovernmental fiscal transfers open to abuse and corruption.⁴⁷¹ As such, the system of indirectly funding local municipalities was not conducive to local fiscal autonomy. It was not only hierarchical, but provincial grants were highly prescriptive, which left municipalities with minimal discretion in executing their constitutional obligations. As such, there was no devolution of fiscal authority but fiscal resources were allocated top-down in a three-tiered hierarchical system of governance.

The categorisation of municipalities and the finalisation of municipal boundaries in December 2000, together with the proliferation of local government policies detailing the administrative and political powers and functions of municipalities, necessitated a need to (re)consider the intergovernmental fiscal relations system. The task at hand was to establish a regulated legislative framework that would determine the respective powers of the spheres to impose and collect taxes and fees, together with how nationally collected revenue was to be divided among spheres of government. The resultant systems and processes depict fiscal decentralisation as it stands today in South Africa.

The Constitution states that the system of intergovernmental fiscal relations must “ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them.”⁴⁷² It must also take into consideration the fiscal capacity and efficiency of the provinces and municipalities;⁴⁷³ the developmental and other needs of provinces, local

⁴⁶⁹ Financial and Fiscal Commission. (1997). Local Government in a System of Intergovernmental Fiscal Relations in South Africa.

⁴⁷⁰ The Financial Fiscal Commission. (1997). The Allocation of Financial Resources between the National and Provincial Governments: Recommendations for the 1996/97 Fiscal Year.

⁴⁷¹ The Financial Fiscal Commission. (1997). The Allocation of Financial Resources between the National and Provincial Governments: Recommendations for the 1996/97 Fiscal Year.

⁴⁷² Section 214 (3)(d) of the Constitution of South Africa. (Act 106 of 1998).

⁴⁷³ Section 214 (3)(e) of the Constitution of South Africa. (Act 106 of 1998).

government and municipalities;⁴⁷⁴ and the obligations of the provinces and municipalities in terms of national legislation.⁴⁷⁵

As such, fiscal decentralisation is not an option but a duty conferred upon national government by the Constitution. Accordingly, national government has an obligation to ensure that municipalities have adequate fiscal powers to provide basic services and perform the functions allocated to them.⁴⁷⁶ In addition, the Constitution stipulates that any such decisions must be taken only after the provincial governments, organised local government (SALGA) and the Financial and Fiscal Commission have been consulted.⁴⁷⁷

6.2 The Decentralisation of Fiscal Powers and Authority

In South Africa, the determination of fiscal powers and authority is a central responsibility. The literature on fiscal decentralisation suggests that the devolution of political and administrative powers and authority must be accompanied by fiscal powers and authority.⁴⁷⁸ The argument presented by Bahl *et al* is that local political decision-making or administrative authority cannot exist without a degree of autonomous local financial capacity.⁴⁷⁹

Local government in South Africa is tasked with five key functions. These are: to govern in a democratic manner; to ensure the provision of basic services; to promote social and economic development; to promote a safe and healthy environment; and to encourage community participation in local government.⁴⁸⁰ These all have financial implications and in a system of cooperative governance this translates into a national government obligation to create a decentralised system of intergovernmental fiscal relations which devolves fiscal powers to sub-national governments so that each sphere can be distinctive, interdependent and interrelated.⁴⁸¹

⁴⁷⁴ Section 214 (3)(f) of the Constitution of South Africa. (Act 106 of 1998).

⁴⁷⁵ Section 214 (3)(h) of the Constitution of South Africa. (Act 106 of 1998).

⁴⁷⁶ Section 214 (2)(d) of the Constitution of South Africa. (Act 106 of 1998).

⁴⁷⁷ Section 214 (2) of the Constitution of South Africa. (Act 106 of 1998).

⁴⁷⁸ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

⁴⁷⁹ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

⁴⁸⁰ Section 152 (1) of the Constitution of South Africa. (Act 106 of 1998).

⁴⁸¹ Section 40 of the Constitution of South Africa. (Act 106 of 1998).

At its most basic definition, fiscal powers refer to sub-national governments' authority to raise, collect and spend local taxes. In South Africa, the capacity for revenue generation is unequally distributed between the three spheres of government.⁴⁸² Provinces, for example, are regarded as only being able to generate about 40% of their own revenue because of their limited revenue raising capacity. For example, provinces cannot impose corporate income tax, value-added tax (VAT), excise levies or property taxes. Their own revenue sources are limited to motor car license fees, hospital fees, casino and horseracing taxes.

On the other hand, the National Treasury posits that municipalities can generate 90% of their own revenue.⁴⁸³ This consists primarily of revenue generated through services charges, property rates and income generated through investments or other public contributions. Despite the apparent revenue-raising autonomy, municipalities have no authority to set tax rates. Sub-national government rates, fees or taxing powers are determined by the national Minister of Finance who sets the national norms and standards for imposing municipal user fees and surcharges.⁴⁸⁴

The theory on decentralisation contends that when autonomous financial powers and functions are not devolved to municipalities, the latter cannot be held accountable by their local constituency since municipal officials will find themselves more answerable to national or provincial government who control their funding allocations.⁴⁸⁵ Such a scenario is indicative of fiscal decentralisation by delegation as opposed to devolution.

In South Africa, municipal taxing powers are limited to a set of service fees or rates which compensate municipalities for general service expenditures but subject to national legislation.⁴⁸⁶ Municipalities, to a lesser extent, also generate other revenue in the form of

⁴⁸² Whelan, P. (2002). *Local Government Finance Reform*. Pp. 233-251. In Parnell, S., Pieterse, E., Swilling, M. and Wooldrige, D. (2002). Democratising Local Government: The South African Experience. Cape Town: University of Cape Town Press.

⁴⁸³ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁴⁸⁴ Section 8.2(a) of the Municipal Fiscal Powers and Functions Act. (Act 12 of 2007).

⁴⁸⁵ Cohen, J. and Peterson, S. (1997). Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance. Cambridge: Harvard Institute for International Development.

⁴⁸⁶ The Municipal Fiscal Powers and Functions Act. (Act 12 of 2007). And Section 229 of the Constitution of South Africa. (Act 106 of 1998).

traffic fines, business licences, rental fees, entrance fees for use of municipal facilities and fresh produce markets.⁴⁸⁷

Revenue from property rates is spent exclusively within a municipality. Property rates often finance street maintenance, lighting, storm drainage, cemeteries, parks and recreational facilities or other general administrative expenses. Property rates may not exceed nationally determined rates. National and provincial governments do not have the power to levy property rates, nor do they share in the revenue collected.⁴⁸⁸

Besides property rate taxes, municipalities are legally entitled to levy surcharges on municipal services. Municipal surcharges are charges in excess of the municipal base tariff that a municipality may impose on fees for a municipal service provided.⁴⁸⁹ Surcharges are normally generated from trading in bulk services such as water and electricity reticulation, and should be able to fund and cross-subsidise other municipal services where fees are not forthcoming.⁴⁹⁰ However, the chapters on administrative decentralisation and cost recovery illustrated that cross-subsidisation through surcharges has fallen away for Category B municipalities since their authority for bulk services has been transferred to Category C municipalities.⁴⁹¹

Municipalities have limited borrowing powers and may not seek international loans. All applications need approval from the national Minister of Finance.⁴⁹² But approval is not the only example of central control. The previous system of national government guarantees was abandoned in 1994, hence municipalities are forced to borrow on their own merits. Given the poor state of local government finances, many private lending institutions do not regard municipalities as creditworthy enough and thus do not qualify for loans.⁴⁹³ According to National Treasury, only 26 out of a total of 283 municipalities in 2006 met the financial requirements necessary to access external loans.⁴⁹⁴

⁴⁸⁷ The Property Rates Act. (Act 6 of 2004).

⁴⁸⁸ The Property Rates Act. (Act 6 of 2004).

⁴⁸⁹ Section 229(1)(a) of the Constitution of South Africa. (Act 106 of 1998).

⁴⁹⁰ The Municipal Fiscal Powers and Functions Act. (Act 12 of 2007).

⁴⁹¹ Prior to the passing of the Municipal Structures Amendment Act, surcharges on the sale of bulk services eg. water and electricity, constituted the majority of local municipal revenue.

⁴⁹² SACities Network. (2007). State of Cities Finances Report.

⁴⁹³ SACities Network. (2007). State of Cities Finances Report.

⁴⁹⁴ SACities Network. (2007). State of Cities Finances Report.

In short, while in legal terms municipalities have some fiscal powers and responsibilities, in reality their fiscal autonomy is limited. While they may collect local revenue, the type and rates are determined by national government. And as the previous chapter highlighted, while municipalities have the authority to collect property rates and user fees, problems of non-payment and indigence limit revenue generating capacity. The latest statistics presented in the Local Government Budgets and Expenditure Review (2003/04-2009/10), for example, show that municipalities were far from being able to generate 90% of their own revenue. On the contrary: it generated only 78%. (43% in services charges, 19% through property rates, and 12% from other sources of income). Government grants comprised 22% of the total operating revenue of municipalities.⁴⁹⁵

The lack of financial self-reliance of municipalities means that their fiscal autonomy is significantly dependent on the system of intergovernmental fiscal transfers. In this respect, the Division of Revenue is probably the most revealing and crucial aspect of fiscal decentralisation in South Africa.

6.3 The Division of Revenue

The annual Division of Revenue is a system of intergovernmental revenue sharing aimed at subsidising the different spheres of government regarding their respective service expenditures. National revenue primarily comprises individual income taxes, excise duties, value-added-tax (VAT) and a fuel levy. At its most basic, dividing national revenue is determined by firstly deducting a contingency reserve and interest payments on state debts. The remainder is divided vertically between the three spheres of government. These allocations in turn are divided horizontally – shared between the different national government departments; provinces; and the different municipal categories.⁴⁹⁶

Figure 6.1 below provides a graphical illustration of the vertical and horizontal division of revenue for the 2009/10 financial year. (Appendix 10 provides a detailed breakdown of funding in percentage terms).

⁴⁹⁵ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁴⁹⁶ This understanding is derived from analysing the annual Division of Revenue Acts since 2002.

Figure 6.1: Vertical and Horizontal Division of Revenue (2009/10)

national 48.9%									
provincial 43.4%	Eastern Cape 14.0%	Free State 6.3%	Gauteng 19.8%	KwaZulu-Natal 20.7%	Limpopo 11.9%	Mpumalanga 7.8%	Northern Cape 2.8%	North West 6.8%	Western Cape 9.4%
Local 7.7%	Shared between Category A, B and C municipalities.								

Source: Adapted from the Division of Revenue Act (Act 12 of 2009)

The determination of the vertical and horizontal grant distribution has a direct impact on local municipalities’ much needed access to revenue. In this respect, the nature of the national budgetary process is a crucial factor for the fiscal state of local government, because it determines how much funding and the manner in which it will be transferred to the respective spheres of government. This indicates the distribution of fiscal authority and the emerging form of fiscal decentralisation.

6.3.1. The Budgetary Process

The Division of Revenue process is a central government responsibility which resides with the National Treasury. The National Treasury is a national government department that falls within the portfolio of the Minister of Finance. It is responsible for national economic policy, as well as the drafting of the annual budget. The National Treasury determines the amount of revenue available for vertical and horizontal distribution as well as the conditions (if any) attached. The National Treasury drafts a Division of Revenue Bill that allocates nationally raised revenue across the three spheres of government. This process happens annually, commencing in January each year and culminating in parliamentary approval which leads to the enactment of the Division of Revenue Act. Diagram 6.1 illustrates the annual budgeting

cycle. It is clear from the diagram that the National Minister of Finance and the National Treasury are the two fundamental drivers of the annual budgeting process. It is also clear that the legislature (or Parliament) is only involved at the end of the annual budgeting cycle. Even more conspicuous is that legislative hearings at national or provincial government level only take place *after* the budget has been approved. These point to national executive dominance and minimal parliamentary influence.

Diagram 6.1: Annual Budgeting Cycle

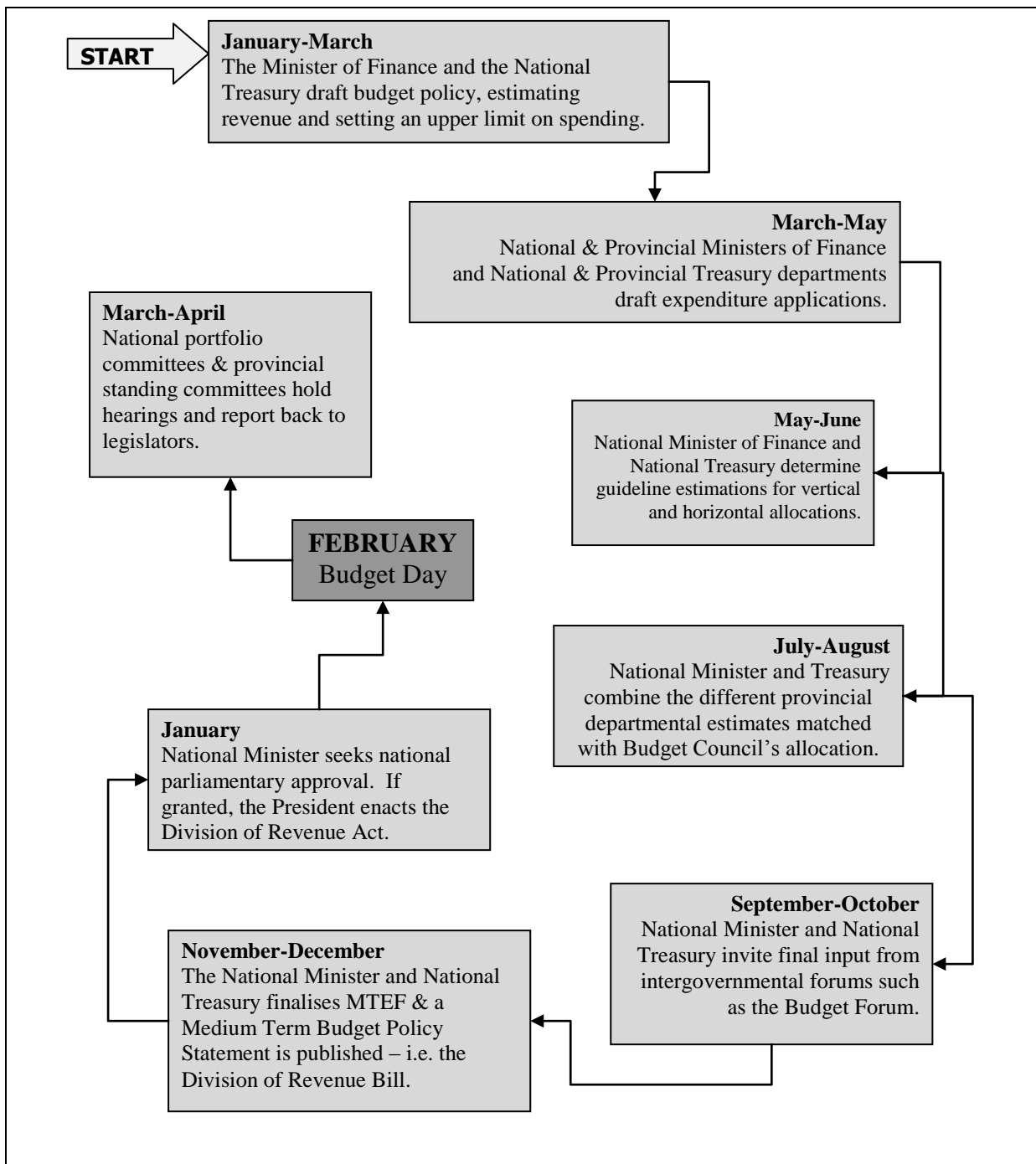


Diagram 6.1 illustrates a predominantly centralised annual budgeting process. However, the Intergovernmental Relations Framework Act (Act 13 of 2005) formalised eight intergovernmental institutions which are regarded as integral to the national budgeting process insofar as they offer a channel for sub-national government input into the Division of Revenue. These are:

- i. The Financial and Fiscal Commission (FFC)
- ii. The Budget Council
- iii. The Budget Forum
- iv. Minister's Committee on the Budget (MinComBud)
- v. The Joint MinMecs⁴⁹⁷
- vi. The Technical Committee on Finance and the Joint Sectoral Technical Committees (4x4s)
- vii. The Treasury Committee
- viii. The Parliamentary Budget Committee.

Table 6.1 defines each of the above intergovernmental institutions and their respective fiscal authority. What is evident from the table is that local government is only represented on the FFC (two members from SALGA) and the Budget Forum (five members from SALGA and nine member representing each of provincial local government association but none representing specific municipal categories). However, these forums are all chaired by national executives. There is no local government representation on any of the other six intergovernmental forums.⁴⁹⁸

Although the annual budgetary process is fundamentally a central responsibility and activity, a decentralised system of governance should promote sub-national government participation. As stated earlier, the Constitution requires that in order to ensure that adequate fiscal powers to provide basic services are allocated to the different spheres of government, such decisions must be taken only after the provincial governments, organised local government and the FFC have been consulted.⁴⁹⁹ Based on closer observation, the officially established intergovernmental forums responsible for the annual budget illustrates a general absence or

⁴⁹⁷ A MinMec refers to a National Minister and related Provincial Ministers (MECs) pertaining to one particular sector. For example, the Housing MinMec which comprises the National Minister of Housing and each of the provincial Ministers of Housing)

⁴⁹⁸ Intergovernmental Relations Framework Act. (Act 36 of 2005).

⁴⁹⁹ Section 214 (2) of the Constitution of South Africa. (Act 108 of 1996).

underrepresentation of local government, with none representing any specific category of municipality.

Table 6.1: Intergovernmental Institutions involved in the National Budgeting Process

<p>The Financial and Fiscal Commission (FFC) Independent constitutionally established advisory body. It makes recommendations on the budget and intergovernmental financial issues to Parliament, the provincial legislatures, and the Budget Council. There are 22 members of the FFC, who serve terms of five years:</p> <ul style="list-style-type: none"> • Nine persons, each of whom is nominated by the Executive Council of a province; • Two persons nominated by South Africa Local Government Association (SALGA), and; • Eleven members appointed by the President.
<p>Budget Council The Budget Council makes recommendations to the Cabinet on the budget. The Budget Council was formalised and given specific functions by the IGFRA which requires the Ministry of Finance to convene the Council at least twice a year. The Council is consulted on fiscal and financial matters affecting provincial government. The core membership of the Budget Council is the:</p> <ul style="list-style-type: none"> • Finance MinMEC (the Minister and Deputy Minister of Finance and the nine provincial MECs for Finance); • Treasury advisors, and Director General of Finance and Heads of Treasury.
<p>Budget Forum The Budget Forum is a consultative forum pertaining to local government. It comprises:</p> <ul style="list-style-type: none"> • five members of SALGA • one representative from each of the provincial local government associations. <p>The Budget Forum is convened by the national Minister of Finance, while the national Minister of Provincial and Local Government may attend. However, the Budget Forum is only expected to meet once a year.</p>
<p>Minister’s Committee on the Budget (MinComBud) The MinComBud is a smaller technical subcommittee of Cabinet specifically tasked with budget matters, involved in the oversight of the developing budget and its compliance with government goals.</p>
<p>Joint MinMecs These committees are MinMecs for sectors which are concurrent functions of national and provincial government such as health, education and housing. Each committee is composed of: the national minister and the provincial ministers (MECs) for that sector. They meet throughout the year to identify trends in the sector, set priorities, and discuss budgetary implications of national policies for provincial service delivery.</p>

Technical Committee on Finance and the Joint Sectoral Technical Committees (4x4s)

Often referred to as 4x4s as they comprise four national and four provincial representatives, and bring together treasury and line departments, at both the national and provincial levels. The 4x4s are permanent bodies and support the Budget Council and discuss policy options of the particular sector, such as problems with service delivery. The 4x4s are permanent bodies which meet throughout the year to consider other sector-wide policy issues beyond budgeting. In addition to 4x4s for health, education, welfare, personnel, and justice, 4x4s have now also been convened to address infrastructure and transport. The purpose of the 4x4s is to enhance intergovernmental relations and the exchange of information, while taking a long term perspective on spending and policy. However 4x4s are advisory bodies and do not have decision-making power.

Treasury Committee

The Treasury Committee evaluates requests from provinces and national departments for additional funds. The Committee is chaired by the Minister of Finance and includes a select number of Cabinet ministers.

Parliamentary Budget Committee

The Committee is an *ad hoc* committee and holds hearings on the Medium-Term Budget Policy Statement (MTBPS). Its purpose is to offer the national legislature an avenue to be involved in the executive budgeting making process. (However, hearings only take place once the budget has already been approved by the National Parliament, and the following year's budgeting process has commenced). It comprises:

- 15 members from the National Assembly (nine ANC members and six members of the opposition)
- 8 members of the National Council of Provinces (five ANC members and three opposition members).

Source: Adapted from the Intergovernmental Relations Framework Act. (Act 13 of 2005).

Table 6.1 above reiterates the arguments made in the chapters on political decentralisation and administrative decentralisation that the national executive dominates the policy decision-making processes of South Africa. The implication of a nationally dominated budgeting process is that it unilaterally controls the division of revenue allocation. Local governments have minimal influence in the determination of the amount and conditions attached to intergovernmental transfers. In addition, local government is treated as a uniform sphere, with no consideration for the implication of the division of revenue for the different categories of municipalities.

6.3.2 Conditional and Unconditional Grants

Intergovernmental fiscal transfers to municipalities from national and provincial government are made through a range of different mechanisms and instruments. Some are directly transferred to municipalities as cash, either on a conditional or an unconditional basis. Others come indirectly in the form of assets; and to a lesser degree, revenue can also be raised from borrowing and private sector equity in infrastructure.⁵⁰⁰

As the term suggests, certain prescriptions to transfers are attached to conditional grants by stipulating both the content and the project outcomes of implementation. As such, conditional grants limit local government autonomy since the allocation and renewal of conditional grants depend on whether funds are available and whether municipalities have met the requirements set out by the dispersing department. Unconditional grants, on the other hand, impose few restrictions on how funds should be spent. In theory, such grants determine the broad goals but do not specify the approach municipalities must take to achieve them.

The ratio between conditional and unconditional grant allocations is often regarded as a key indicator of local government autonomy.⁵⁰¹ The inference is that more unconditional funding means more local government autonomy. The Constitution instructs national government to support the devolution of political and administrative powers and functions to local government by means of transferring adequate fiscal resources in order for local government to independently meet their Constitutional mandate. This is determined by local government's right to an equitable share of national revenue, which is characterised as:

- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
- (b) the determination of each province's equitable share of the provincial share of that revenue; and

⁵⁰⁰ This is based on a review of the Division of Revenue Acts published between 2000-2009.

⁵⁰¹ Oates, W. (1999). *An Essay on Fiscal Federalism*. In Journal of Economic Literature. Volume 37(3). Pp. 1120-1149.

- (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made.⁵⁰²

In this regard, the Constitution stipulates that an equitable share for the division of revenue must be expressed in national legislation. In terms of the Constitution, provincial and local governments are entitled to an equitable share of the national revenue to enable them to perform their mandated functions and provide basic services.⁵⁰³ In the South African context, the reference to 'equitable' is significant because of the apartheid government's practice of funding respective geographical areas based on race as opposed to fiscal need. The Constitution requires that the division of revenue must be based on a consideration of provinces' and municipalities' fiscal capacity and efficiency;⁵⁰⁴ developmental needs;⁵⁰⁵ as well as economic disparities.⁵⁰⁶ In this respect, intergovernmental transfers are aimed at correcting the historical fiscal inequities and inefficiencies among the different spheres of government. This type of intergovernmental approach to funding is aimed at achieving fiscal equality as well as local fiscal autonomy.

The Equitable Share system was first proposed by the FFC in 1998/99 (but only applied in the 2002/2003 financial year) as a response to the inadequacy of the previous intergovernmental transfers to provincial governments.⁵⁰⁷ The purpose of this unconditional grant is to assist local government to cover their recurring operating costs associated with their constitutional service delivery mandate, thereby assisting municipalities to eradicate existing backlogs as well as extend service delivery by off-setting a portion of the municipalities' operating costs. The Equitable Share is a formula grant, allocating funds based on demographic need.⁵⁰⁸ The Equitable Share does not include capital transfers. The latter are financed through a separate system of conditional grants, which target a specific service.

⁵⁰² Section 214 (1)(a, b and c) of the Constitution of South Africa. (Act 108 of 1996).

⁵⁰³ This is a vertical division of revenue between the three spheres of government.

⁵⁰⁴ Section 214 (2)(e) of the Constitution of South Africa. (Act 108 of 1996).

⁵⁰⁵ Section 214 (2)(f) of the Constitution of South Africa.. (Act 108 of 1996).

⁵⁰⁶ Section 214 (2)(g) of the Constitution of South Africa. (Act 108 of 1996).

⁵⁰⁷ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁰⁸ The Equitable Share formula will be analysed in more detail later on in this chapter.

Because conditional grants are prescriptive, municipalities have to comply with the specified requirements. National government has the autonomy to decide how much, and on what funds must be spent. The parameters of these grants are determined by the dispersing national department. In other words, the department designs criteria and parameters which determine on what provincial and local government can spend such funds.

Conditional grants can be powerful mechanisms for central control. They give national ministries strong leverage over sub-national spheres of government, leaving provincial and local government with no discretion in fund utilisation. Conditional grants tend to be *ad hoc* grants in which the size of the divisible pool and the beneficiaries are determined annually by the national government. Examples over the last decade have included: open-ended construction grants that require approval of each project; grant allocations decided on a discretionary basis by national government; and supplementary grants allocated for special purposes during the fiscal year. (See Appendix 11 for a list of conditional grants). Provinces and municipalities are currently not authorised use any unspent conditional grants for any other programmes.⁵⁰⁹

In short, unconditional and conditional grants serve two distinct and separate purposes. As stated earlier, fiscal decentralisation is about the transfer of fiscal power and authority to democratically elected sub-national levels of government to collect, spend and raise own revenue in line with sub-national governments' respective expenditure responsibilities.⁵¹⁰ The previous chapter on cost recovery concluded that municipalities are far from financially self-sufficient and that given their limited taxing and revenue-raising capacity, they will remain dependent on intergovernmental transfers. Although a crucial element of fiscal decentralisation, intergovernmental fiscal transfers cannot by themselves increase local autonomy. The problem is not with municipalities' reliance on intergovernmental fiscal transfers, but rather with the conditions attached to them.

⁵⁰⁹ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵¹⁰ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

As Bahl and Linn point out:

*[A] system of grants is a step toward fiscal decentralization in that it finances local government services, but the degree of autonomy it gives local governments in making their budget decisions depends on the structure of the grant system.*⁵¹¹

6.4 Fiscal Decentralisation and Local Government Autonomy

So far the chapter has presented the rationale for and broad framework of fiscal decentralisation in South Africa and identified the fiscal powers and authorities of local government. As has been explained, substantial fiscal authority has been devolved to local government. The Division of Revenue process, in principle, aims at redistributing national revenue vertically and horizontally across the different spheres and departments of government. However, it was shown that the annual national budgetary process is primarily driven and controlled by the Minister of Finance and the National Treasury. This has implications for local fiscal autonomy because while the envisaged system of intergovernmental fiscal transfers promotes redistribution, the amounts and conditions attached to such transfers are decisions taken primarily by the Minister of Finance and National Treasury. This may result in fiscal allocations being based on the agenda of the ruling party, as opposed to the needs of local government.

It is now necessary to take a more critical look at the nature of grant allocations over the last few years. It will become evident that intergovernmental fiscal transfers in South Africa reflect both centralising and decentralising elements in the way that grants are defined and dispersed to local government. It will be argued here that fiscal discretion at local government level remains limited. This view is based on three factors: (i) the nature of grant allocations to local government; (ii) the relationship between the Equitable Share and the Municipal Infrastructure Grant (MIG); and (iii) the Equitable Share formula. Each will now be discussed in turn.

⁵¹¹ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press. Page 6.

6.4.1 Grant Allocations to Local Government

The National Treasury claims, as noted previously, that municipalities can generate more than 90% from own operating revenue and that the shortfall between national revenue allocation and own revenue can be self-financed through, for example, investments and other income generating opportunities.⁵¹² Figure 6.2 illustrates that for the 2009/10 financial year, municipalities received 7.7% of the total amount of national revenue as opposed to 43.4% that was transferred to provinces and 48.9% to national governments.⁵¹³

Figure 6.2: The Vertical Division of National Revenue 2003-2010

Source: Adapted from National Treasury. Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵¹² National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵¹³ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

The vertical division of national revenue to the different spheres of government has since 2003 led to a progressive increase in local government funding, thus making more resources available to municipalities. Figure 6.2 indicates that local government allocations have increased from 4.1% in the 2003/04 financial year to 7.7% in the 2009/10 financial year. Provincial allocations have remained fairly consistent (43.44% in 2003/04 as well as in 2009/2010), and allocations to national government departments have slowly decreased (from 52.5% in 2003/04 to 48.9% in 2009/10).

The percentage share of national revenue which is allocated to local government is the total amount of funding allocated to local government. In other words, it includes conditional as well as unconditional grants. In the 2003/04 financial year, the Equitable Share grant constituted approximately 51%, and conditional grants approximately 49% of the total share (4.1%) of national revenue allocated to local government. In the 2009/10 financial year, the total allocation has risen to 7.7%, with the Equitable Share portion increasing to 62%, while conditional grants dropped to 38%. This is reflected in Figure 6.3.

Figure 6.3: Annual Equitable Share and Conditional Grants Allocation to Local Government

As seen in Figure 6.3, the Equitable Share is increasing significantly, whereas conditional grants are decreasing. At first glance, the immediate assumption is that local government discretion is on the increase, and by implication, local fiscal autonomy too, because a larger percentage of local government grants are transferred through the unconditional Equitable Share grant. Based on the notion that more unconditional transfers means more local autonomy, it would appear as if fiscal power and authority is increasingly being devolved to local government. This trend - theoretically - signifies a move towards greater local financial autonomy. Such an interpretation, however, is misleading. Consider the divergence illustrated in Figure 6.4. It shows that while in percentage terms, conditional grants have decreased from 49.19% (in 2003/04) to 37.86% (in 2009/10), in real terms allocations for conditional grants allocations continue to increase. This is because the overall allocation of national revenue to local government increased from 4.1% in 2003/04 to 7.7% in 2009/10. (See Figure 6.2).

Figure 6.4: Percentage Growth in Equitable Share and Conditional Grants Allocations

Figure 6.4 demonstrates that, on average, there has been a steady increase in conditional grant allocations; from 2.02% (in the 2003/04 financial year) to 2.92% (in the 2009/10 financial year). What it does indicate, however, is that the weighting favours the Equitable Share allocation. The latter increased from 2.08% (in the 2003/04 financial year) to 4.78% (in the 2009/10 financial year).

The general tenet, cited earlier, is that the larger the unconditional component of fiscal transfers, the more financially autonomous local governments are.⁵¹⁴ Based on this hypothesis, it would then appear as if local fiscal autonomy in South Africa is increasing because of the continual growth in the Equitable Share allocation. (As illustrated in Figures 6.2; 6.3 and 6.4). However, the apparent increase in the Equitable Share allocation should not be interpreted as central government devolving more fiscal autonomy to local government. There are many underlying factors that underlie the apparent 'growth' of the Equitable Share grant such as: the abolishment of Regional Service Council levies (RSC levies) in 2002; the hosting of the 2010 FIFA World Cup; and the declining capacity-building grant.⁵¹⁵ These factors account for the growth in Equitable Share allocation.

For example, it was estimated that RSC levies on average constituted approximately 7% of municipalities' own operating revenue.⁵¹⁶ Since the abolition of these levies, municipalities have been compensated for their loss through the Equitable Share allocation. In addition, the National Treasury acknowledged that the Equitable Share allocation has increased since 2006/07 in order to subsidise the operating costs associated with the preparations and hosting of the FIFA 2010 World Cup.⁵¹⁷ These two factors have contributed significantly to the rise in the Equitable Share allocation. In addition, there has been a marked decline in the conditional grants for local government capacity-building. This type of conditional grant decreased from 7.7% (in 2003/04) to 1% (in 2009/10) and thus contributes to the overall

⁵¹⁴ Bahl, R. and Smoke, P. (2003). Restructuring Local Government Finance in Developing Countries: Lessons from South Africa. Cheltenham: Edward Elgar Publishing. And Shah, A. (2004). *Fiscal Decentralization in Developing and Transition Economies: Progress, Problems and Promise*. World Bank Policy Research Working Paper (3282). Washington: World Bank.

⁵¹⁵ Appendix 10 provides a breakdown of the percentage terms as well as figures in Rands of the various components that constitute the broad types of conditional grants.

⁵¹⁶ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵¹⁷ The Division of Revenue Act (Act 12 of 2009).

lessening of conditional grant allocations.⁵¹⁸ In other words, it is therefore incorrect to interpret an increase in Equitable Share allocation as an indication that fiscal autonomy is being devolved to local government.

By contrast, the relationship between conditional and unconditional grants is a more significant indicator of local fiscal autonomy. The devolution of fiscal power and authority means that central government transfers an adequate amount of unconditional funds to local government, without any central government conditionalities attached. According to Bahl *et al*, the devolution of local fiscal powers and authority is diminished when municipalities rely on intergovernmental fiscal transfers, especially when these funds are accompanied by certain conditionalities.⁵¹⁹ According to the Constitution, the Equitable Share grant is supposed to serve this purpose. It is meant to enable municipalities to meet their constitutional mandate autonomously and effectively. However, on closer examination, the Equitable Share is far from unconditional or discretionary. On the contrary, there are a number of factors that indicate that the Equitable Share allocation is integrally linked to conditional grants, such as the Municipal Infrastructure Grant (MIG), which limits local fiscal autonomy.

6.4.2 The Equitable Share and the Municipal Infrastructure Grant

Prior to 2004, numerous conditional grants existed, each administered by different departments. (See Appendix 11). Some of these grants were incorporated into the Equitable Share, while others were consolidated into the Municipal Infrastructure Grant (hereafter referred to as MIG), which is currently the largest infrastructure transfer programme.⁵²⁰

MIG currently includes a range of specific conditional grants that provide capital investment for particular service delivery infrastructure to municipalities with backlogs and high levels of poverty. It accounts for an average of 54.1% of all infrastructure transfers between 2003/04 and 2009/10.⁵²¹

⁵¹⁸ The Division of Revenue Act (Act 12 of 2009).

⁵¹⁹ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

⁵²⁰ Whelan, P. (2002). *Local Government Finance Reform*. Pp. 233-251. In Parnell, S., Pieterse, E., Swilling, M. and Wooldrige, D. (2002). Democratising Local Government: The South African Experience. Cape Town: University of Cape Town Press.

⁵²¹ The Division of Revenue Act. (Act 12 of 2009).

The objective of MIG was to consolidate conditional grants in order to streamline their management. Conditional grants by their very nature and objective depend on central control and oversight. Currently, programme co-ordination takes place at the national MIG Unit, located in the national Department of Cooperative Governance and Traditional Affairs⁵²² which is the lead department. However, coordinating and streamlining the grant across the different transferring departments is complex.⁵²³ MIG stretches across a number of government departments, across different spheres of government. Table 6.2 summarises the key responsibilities of the respective national government departments in the implementation of MIG, and shows the extensiveness of the conditions attached to MIG.

The national Minister of Finance stated that the objective of MIG grant allocations would provide:

*... all South Africans with at least a basic level of service by the year 2013 through the provision of grant finance to cover the capital cost of basic infrastructure for the poor. It is part of government's overall strategy to eradicate poverty and to create conditions for local economic development.*⁵²⁴

MIG is especially targeted at infrastructure necessary to provide poor/indigent households with free basic services but focusing primarily on water. Municipalities must spend funds on the provision of infrastructure necessary to supply 25 litres of potable water per person per day supplied within 200 metres of a household and with a minimum flow of 10 litres per minute (in the case of communal water points), or 6 000 litres of potable water supplied per formal connection per month (in the case of yard or house connections); or to upgrade and build new infrastructure up to a basic level of service in existing formal settlements.⁵²⁵ Capital investment in electricity infrastructure is not yet included in MIG and has been postponed until the system of regional electricity distribution has been finalised.⁵²⁶

⁵²² The Department of Cooperative Governance and Traditional Affairs was previously known as the Department of Provincial and Local Government.

⁵²³ The departments from which the funds originate are referred to as the transferring departments.

⁵²⁴ Department of Provincial and Local Government. Municipal Infrastructure Handbook. 2004-2007.

⁵²⁵ Department of Provincial and Local Government. Municipal Infrastructure Handbook. 2004-2007..

⁵²⁶ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

Table 6.2: The Municipal Infrastructure Grant (MIG)

Department	Breakdown of Departmental Responsibilities
<ul style="list-style-type: none"> ▪ National Treasury 	Overall allocation of MIG funds through the Division of Revenue Act (DORA).
	Determine specific MIG conditions and funding allocation.
	Monitor financial reporting, revenue related criteria and spending trends.
	Ensure that municipalities operate within the macroeconomic framework.
<ul style="list-style-type: none"> ▪ Public Works 	Set criteria for poverty alleviation and employment generation.
	Advise municipalities on labour construction, procurement, techniques and approaches.
	Monitor poverty alleviation and employment generation conditions.
	Monitor municipal performance in terms of labour, SMME involvement and compliance with Expanded Public Works Programme (EPWP) conditions.
<ul style="list-style-type: none"> ▪ Water Affairs and Forestry 	Setting the norms and standards for water services infrastructure.
	Implement Water Services Development Plans (WSDPs).
	Monitor progress in meeting targets for water and sanitation.
	Complete feasibility studies, business plans and implement water services capital projects on behalf of municipalities.
	Initiate intervention related to water services activities.
<ul style="list-style-type: none"> ▪ Transport, ▪ Sports & Recreation ▪ Minerals and Energy 	Setting the norms and standards for the sector.
	Sector planning support to municipalities.
	Monitor municipal performance in the provision of sector infrastructure and compliance with sector conditions.
	Ensure that funds for sector infrastructure are properly spent. Once the Integrated National Electrification Programme is incorporated into the MIG - DME to plan, support, design, monitor and implement electrification programmes.
<ul style="list-style-type: none"> ▪ Housing 	Coordinate policy and planning of housing development and the provision of infrastructure.
	Coordination between the MIG and the Housing Fund.

Source: Adapted from the Department of Provincial and Local Government. Municipal Infrastructure Handbook, 2004-2007.

The objective behind establishing one consolidated conditional grant was to assist with streamlining the grant application process, but as a result, it has also standardised the conditions attached. MIG has been criticised for being a nationally determined and driven process, which is applied uniformly to the different municipal categories and linked to the national service delivery mandate, without being informed by local need or capacity. MIG has become a channel where national and provincial government departments engage with municipalities on sectoral priorities. One comment made, for example, was that MIG has immense influence on how municipalities draft their local IDPs because municipalities want access to as much funding as possible, even if this is conditional.⁵²⁷ Another critique raised, is that MIG emphasises quantity above quality.⁵²⁸ For example, municipalities may not opt to provide fewer households with better basic service infrastructure (such as flush toilets) as opposed to providing all households with ‘at RDP level’ sanitation (which means ventilated pit latrines).⁵²⁹ Such prescriptions leave municipalities with no discretionary power. It also leaves municipalities with the operating cost of maintaining MIG infrastructure investment. This is proving to be challenging for municipalities because, as discussed earlier, the high levels of non-payment and indigence make cost recovery difficult. Municipalities currently rely on the Equitable Share to maintain MIG infrastructure.⁵³⁰

The assumption is that increased capital investment in basic infrastructure will contribute to poverty alleviation and/or local economic development. However, the FFC noted a growing reliance among municipalities on MIG (even if they did not want it) to cover general municipal operating costs. The consequence in some cases is that investments are made in unwanted infrastructure, thereby increasing the operating costs and the burden of maintenance that may be too demanding for municipalities to sustain, or in the long-run will need upgrading.⁵³¹ The question that emerges here is whether the Equitable Share allocation is adequate.

The argument made earlier in this chapter was that the steady growth in the Equitable Share allocations and the apparent decline in conditional grants should not be interpreted as an indication of increasing devolved local fiscal autonomy. Figure 6.5 reinforces this contention

⁵²⁷ Municipal Councillor (Msunduzi Municipality). Pietermaritzburg. 13 February 2008.

⁵²⁸ Municipal Councillor (Msunduzi Municipality). Pietermaritzburg. 13 February 2008.

⁵²⁹ Municipal Councillor (Msunduzi Municipality). Pietermaritzburg. 13 February 2008.

⁵³⁰ Municipal Councillor (Msunduzi Municipality). Pietermaritzburg. 13 February 2008.

⁵³¹ Financial and Fiscal Commission. (2009). Submission for the Division of Revenue.

by illustrating in graphical terms that the MIG and the Equitable Share allocations are aligned. In other words, as the MIG allocation has increased, so too has the Equitable Share.

Figure 6.5: The Equitable Share and the Municipal Infrastructure Grant Allocations

Source: Adapted from National Treasury. Local Government Budgets and Expenditure Review 2003/04-2009/10.

The data reveals that in order for municipalities to afford the ongoing operating costs of MIG infrastructure, the Equitable Share allocation needs to increase exponentially more than the MIG. In other words, if MIG in one particular financial year transfers funds to build 100 toilets, the Equitable Share portion should allocate enough funds to cover the operating costs associated with these 100 toilets. If the MIG allocation for the following financial year results in the building of an additional 100 toilets, the operational costs increase proportionately yet again. In this example, the operation costs have doubled for municipalities, and the Equitable Share allocations should therefore increase more substantially. This is not currently the case and, as a result, the Equitable Share ends up being directed at covering the running costs of the MIG. As such the Equitable Share in practice is no longer a discretionary or unconditional grant and therefore fiscal decentralisation increasingly takes on forms of deconcentration and delegation.

6.4.3 The Equitable Share Formula

The chapters on administrative decentralisation and cost recovery indicated that municipalities do not all have access to adequate revenue raising capacity. Category B

municipalities, in particular, are affected by the transfer of water, electricity and sanitation to Category C municipalities, limiting their cost recovery potential even more. The purpose of the Equitable Share is to support municipalities financially. The National Treasury needs to ascertain the revenue raising capacity of municipalities in order to do this effectively.

This is why the Equitable Share formula is so important. The literature on fiscal decentralisation indicated that a characteristic of fiscal devolution is that the majority of fiscal transfers are formula-based and unconditional.⁵³² In principle, this is the case of the Equitable Share formula. However, the formula is yet to be applied in full.

The formula currently is:

Basic Services component [BS] + Development component + Institutional support component [I] - Revenue-raising capacity correction [R] ± Correction factor [C]⁵³³

$$\text{Grant} = \text{BS} + \text{D} + \text{I} - \text{R} \pm \text{C}$$

The Equitable Share has since its inception in 2002 been criticised for being applied uniformly across different categories of municipalities regardless of capacity. In 2005 components [R] and [C] were included in the Equitable Share formula.⁵³⁴

The Basic Services [BS] component is there to assist municipalities in providing a poor household with four basic services: electricity, water, refuse and sanitation. One challenge is to determine the associated average costs, and another is what constitutes a poor household. The formula regards households which earn R800 month or less as indigent and entitled to free basic services. This assumes that households that earn R1 above the R800 threshold are able to afford the entire cost of these services.

The Equitable Share currently supports municipalities with the eradication of remaining service delivery backlogs to the value of R175 per indigent, regardless of municipal

⁵³² Zhang, T., and Zou, H. (1998). *Fiscal Decentralization, Public Spending and Economic Growth in China*. In *Journal of Public Economics*. Volume 67(2). Pp. 221-240.

⁵³³ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. And the National Treasury. (2009). Budget Review 2009/10.

⁵³⁴ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. And National Treasury. (2005). Budget Review 2005/06.

category.⁵³⁵ However, this assumes that the costs associated with the provision of the very same services are the same for all municipalities. Yet costs depend on population size, density and economies of scale. In other words, the formula does not take into account where the remaining service delivery backlogs are situated, and to what extent service delivery costs vary from municipality to municipality.

The Development [D] component has not yet taken effect. It is aimed at supporting developmental local government objectives, beyond basic services, as envisaged in section 214 of the Constitution.

The Institutional Support [I] component supports low or medium capacity municipalities (defined as those municipalities that operate in rural areas or small towns, without a significant urban core). The municipalities tend to spend more than half of their own revenue on administrative costs. The formula is:

$$I = \text{Base allocation} + [\text{Admin support} * \text{Population}] + [\text{Council Support} \& \text{Number of Seats}]$$

Where the values used are:

$$I = R350,000 + R1 * \text{population}] + [R36,000 * \text{councillors}]$$

Source: National Treasury. Local Government Budgets and Expenditure Review 2003/04-2009/10.

The National Treasury has acknowledged that it has not yet successfully applied the revenue-raising capacity correction [R] component or the Correction [C] component which are meant to account for the varying fiscal capacities of municipalities. This can partially be explained by a lack of accurate data to determine the specific costs associated with the provision of a specific service in a particular locality. As the chapter on cost recovery pointed out, there is no existing data on what the costs are of any particular municipal service in any particular locality. Where data exists, the validity of the demographic data (such as the definition of households, the income level used to measure poverty, and the basic services cost element) used in compiling the formula remains questionable.⁵³⁶

⁵³⁵ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵³⁶ Yu, D. (2009). The Comparability of Census 1996, Census 2001 and Community Survey 2007. Stellenbosch Economic Working Papers: 21/09. The Department of Economics and The Bureau For Economic Research. The University of Stellenbosch.

Figure 6.6 illustrates that the distribution of the Equitable Share transfers largely concentrates on metropolitan municipalities. In 2003/04, metropolitan municipalities received only 20% of the equitable share, while local municipalities received 64.2% and district municipalities the remainder. In 2009/10, 39.7% of the total grant went to metropolitan municipalities, 38.5% to local municipalities and 21.8% to district municipalities.⁵³⁷

Figure 6.6: Local Government Equitable Share Allocation per Municipal Category

R Million	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Category A	1,276	1,657	2,300	7,348	8,441	10,015	11,983
Category B	4,077	4,847	5,873	6,727	7,560	9,281	11,609
Category C	1,001	1,174	1,471	3,983	4,674	5,593	6,564
TOTAL	6,350	7,678	9,643	18,058	20,676	24,889	30,156

Source: Adapted from the Division of Revenue Act (Act 12 of 2009)

⁵³⁷ National Treasury. (2009). Budget Review 2009/10.

The rationale behind the high allocation to metropolitan areas is that these areas have higher number of households compared to district and local municipalities.⁵³⁸ Based on the findings of the chapters on administrative decentralisation and cost recovery, most Category B municipalities also have substantial numbers of households but their economic base is less than that of Category A municipalities.

Were the [D], [R] and [C] components of the Equitable Share formula applied, then Category B municipalities might be allocated a larger Equitable Share allocation, since metropolitan municipalities tend to have more revenue raising capacity and less need for institutional support – whereas many Category B municipalities are located in the former independent and self-governing territories, characterised by high basic services [BS] backlogs, weak development [D], institutional capacity [I], as well as revenue raising capacity [R].

The FFC noted that there are currently no formal channels through which funds are dispersed from Category C to Category B municipalities in cases where Category B municipalities provide basic services on behalf of Category C municipalities.⁵³⁹ Most service delivery agreements are through a Memorandum of Understanding which is often not adhered to.⁵⁴⁰ The full implementation of all five of the Equitable Share components might therefore prove to be beneficial to Category B municipalities.

In addition to the above, provinces are also decreasing their allocation of funding for Category B municipalities. Figure 6.7 illustrates that based on the current provincial transfers, funds to Category A and C municipalities are increasing substantially whereas there has been a steady decline in grant allocations to Category B municipalities. The latter experienced more than a 4% decrease in the last financial year.

⁵³⁸ National Treasury. (2009). Budget Review 2009/10.

⁵³⁹ Financial and Fiscal Commission. (2009). Annual Submission on the Division of Revenue: 2009/10.

⁵⁴⁰ Financial and Fiscal Commission. (2009). Annual Submission on the Division of Revenue: 2009/10.

Figure 6.7: Provincial Grant allocations to Local Government

Source: Adapted from the Division of Revenue Act (Act 12 of 2009)

Overall, therefore, allocations from national and provincial governments to Category B municipalities are on the decrease. However, the Equitable Share formula is yet to take into consideration the Revenue-raising capacity correction [R] and the Correction [C] components of the Equitable Share formula. More active steps should be taken to put this into effect. Only then can the Equitable Share allocations be truly redistributive and in the interest of promoting local fiscal autonomy.

Conclusion

This chapter has examined the framework for fiscal decentralisation in South Africa with the objective of highlighting its contribution to facilitating local autonomy. Fiscal decentralisation in South Africa has devolved certain roles and responsibilities to municipalities. There are a number of features in South Africa's current system of fiscal decentralisation that are characteristic of fiscal decentralisation through devolution. For example, the intergovernmental fiscal system allocates a proportion of nationally raised revenue based on a formula, and devolves to municipalities the authority to formulate their own budgets and, in principle, to determine their own resource allocation. In addition, the intention of the Division of Revenue process is to be (re)distributive and promote equity.

Grants are formula-based, benefitting the poorer provinces and municipalities. By definition, the Equitable Share is an unconditional grant which (theoretically) awards municipalities discretion in how funds are spent. Unlike conditional grants which vary from year to year, the Equitable Share introduces greater consistency and predictability, hence enabling municipalities to formulate their annual and medium term budgets more accurately.⁵⁴¹ As such it is indicative of fiscal decentralisation through devolution. Intergovernmental fiscal transfers are no longer *ad hoc* or inconsistent as they were when the division of revenue took place through a hierarchical system of channelling local municipal funds through districts and/or provinces.

Other features of fiscal devolution include the extent to which intergovernmental fiscal transfers are transparent, regular and predictable. Allocations for each province and municipality are made annually, and the Division of Revenue Bill is gazetted five months prior to enactment. This has introduced greater consistency and predictability into the revenues of local authorities, thus improving their capacity to budget properly. Despite continuous problems of intergovernmental coordination, conditional grants have become more streamlined and simplified with the consolidation of conditional grants into one Municipal Infrastructure Grant. The latter is coordinated by the Department of Provincial and Local Government, as opposed to the numerous conditional grants which previously were controlled by all the various departments which administered the service in question. The Equitable Share remains fairly consistent, and the overall sum transferred to local government remains relatively constant.

Even though substantial progress has been made in designing an equitable system of fiscal decentralisation, a number of features demonstrate that while fiscal decentralisation entails the devolution of fiscal responsibilities and functions it does not meaningfully extend local fiscal powers and autonomy.

This chapter has highlighted the implication of local government fiscal transfers for the financial autonomy and capacity of local municipalities. The allocation of grants and a municipality's ability to raise revenue from its residents are significant determinants of whether or not a municipality will be able to ensure the provision of services to communities in a sustainable manner.

⁵⁴¹The Division of Revenue Act. (Act 5 of 2002).

Theoretically, conditional grants are devised to finance the infrastructure necessary to provide basic services, whereas the Equitable Share compensates municipal operating expenses which are associated with eradicating service delivery backlogs as well as the delivery of basic services.⁵⁴² This chapter has shown that conditional grants are particularly targeted at funding the capital expenditure of specific infrastructure necessary for the provision of free basic services, but it is not clear that the Equitable Share has increased accordingly to compensate municipalities for the operating expenses associated with the accumulative provision of free basic services. This means that, in reality, the Equitable Share allocation is in essence a local government revenue stream to maintain capital infrastructure as opposed to unconditional revenue for the general operating costs associated with the constitutional mandate of local government. Such a situation will not further local fiscal autonomy, but will instead heighten the dependence of municipalities on intergovernmental fiscal transfers.

In theory, fiscal decentralisation is about devolving greater local government financial autonomy. However, this chapter has shown that local government relies heavily on intergovernmental fiscal transfers. Local autonomy cannot become fully realised until the vertical imbalance between revenue and expenditure is eradicated. With the introduction of free basic services, this imbalance will become even more pronounced.

The fact that the revenue-raising capacity [R] and correction [R] components of the Equitable Share formula are yet to be put into effect illustrates that the intergovernmental fiscal transfer system is unable to accurately determine the real capacity of the three different categories of municipalities, and may very well overestimate the capacity of Category B municipalities to afford basic service delivery. The challenge is to allocate grants in terms of the Equitable Share which are not only based on demographic needs, but also on the fiscal capacity of municipalities.

This chapter has shown that South Africa's system of fiscal decentralisation is characterised by centrally dominated financial policymaking where local government representation is marginal. It cannot be denied that South Africa needs fiscal equalisation. The disparities are too vast: between provinces, between urban and rural municipalities, even among urban

⁵⁴² The FFC regards a bundle of basic municipal services as potable water, sanitation, municipal health, firefighting, stormwater drainage, refuse removal, municipal roads and electricity. (FFC. (2007). A Grant Scheme for the Progressive Realization of Constitutionally Mandated Basic Services in South Africa: A Simulation Model).

municipalities. Some degree of central control is necessary if fiscal equality is to be achieved. However, from an administrative perspective, municipalities have extensive decentralised service delivery obligations. But the financial discretion of local government is minimal and confined to meeting national service delivery directives. As such, fiscal decentralisation is little more than delegation.

At this point in time, provinces and local governments in South Africa continue to depend on sizeable intergovernmental transfers. Municipalities receive substantial financial transfers from central government. The extent to which they do so is not the problem, but the conditions attached to intergovernmental transfers - including those indirectly attached to the Equitable Share allocation – limit local autonomy.

Municipalities have no choice but to spend intergovernmental transfers according to national directives. So as long as municipalities have limited resources and depend on national transfers, fiscal relations will remain centralised. This impacts on political decentralisation as, firstly, local politicians have little alternative but to serve national mandates, and, secondly, administrative decentralisation is nationally determined by the allocation of responsibilities for the provision of nationally mandated services.

National decisions on the amount and type of intergovernmental fiscal transfers depend on proper budgeting and costing assessments by local municipalities. In addition, this is reliant on up-to-date information and statistical data, stressing the importance of proper planning and financial management at local government level. It is a multiple challenge. Fiscal decentralisation depends on municipalities having the capacity and revenue to implement sound financial management practices. And suitably designed intergovernmental fiscal transfers depend on accurate data, which municipalities have been struggling to generate, with little success.

The optimum model remains to be designed, but significant progress has been made. South Africa's current intergovernmental fiscal relations system has succeeded in narrowing the fiscal inequalities across and within the different spheres of government, but this is far from complete. It is unquestionable that local government cannot meet its Constitutional obligations with its current revenue base. Hence, the necessity for a proper system of intergovernmental relations and fiscal transfers is indisputable. But how can an appropriate

system of intergovernmental fiscal transfers be determined when the requisite data for planning is deficient, and when increasing legislative provisions relating to local government continue to confer additional responsibilities and functions on municipalities?

Based on the theories on fiscal decentralisation, local fiscal autonomy exists when:

- municipalities have the authority to set the rates for local revenue
- the majority of fiscal transfers are formula-based and unconditional
- local government revenue more or less match responsibilities
- local government revenue finances the majority of local expenditure, and
- when local government have the autonomy for procurement.⁵⁴³

Based on the above criteria, one can conclude that municipalities in South Africa can be regarded as having limited local fiscal autonomy. South Africa's system of fiscal decentralisation is characterised by centralised taxation and decentralised service delivery obligations. Whether intergovernmental transfers are conditional or not, central government continues to delineate the parameters attached to each transfer. National government sets the regulatory framework; determines the division of revenue; approves municipal budgets; determines local user fees; sanctions municipal development plans; and has the authority to allow or disallow municipal borrowings. And the National Treasury has recently proposed the centralisation of municipal procurement.⁵⁴⁴ The argument is that it will end the corruption prevalent in municipal tender processes. However, if this proposition comes into effect, local autonomy will yet again be further constrained by central control.

To conclude, the fiscal challenges facing municipalities partially emanate from the system of intergovernmental fiscal relations. The current system of grant allocations to local government does not support an argument that fiscal authority is increasingly being devolved to local government. It is also doubtful whether the centralised manner of intergovernmental fiscal relations is conducive to efficient and effective basic service delivery. On the contrary, there are more signs that the current system may increase the service delivery burden on local government without local government having the necessary financial authority to act autonomously. The growing dependence on national fiscal transfers erodes the devolved

⁵⁴³ Zhang, T., and Zou, H. (1998). *Fiscal Decentralization, Public Spending and Economic Growth in China*. In *Journal of Public Economics*. Volume 67(2). Pp.221-240.

⁵⁴⁴ Editorial. Fin24. Available at www.fin24.com Accessed 19 October 2009.

fiscal authority that might have been created in principle. This translates into a number of fiscal challenges. These will be explored in the following chapter.

CHAPTER SEVEN

FISCAL CHALLENGES TO BASIC SERVICE DELIVERY

The restructuring of local government is ... far from over. Municipalities will be required to amalgamate administrations and restructure administrations and service delivery arrangements, among other things. At the same time local government must ensure continued access to municipal services for all citizens. Enormous pressures will initially be placed on municipalities during this process. It is therefore critical to provide financial assistance to municipalities for approximately two years.

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Introduction

The quotation above is cited in the Department and Provincial Government's 2001/02 Annual Report. Seven years later, municipalities continue to depend on 'financial assistance'. The objective of this chapter is to examine some of the key fiscal challenges that continue to face municipalities in their provision of basic services. These, it will be argued, severely diminish local government autonomy.

The argument is often touted that municipalities face financial problems because they are inefficient, corrupt and have poor financial management skills.⁵⁴⁵ However, the previous chapters have illustrated that there are other underlying factors, some of which are systemic and others which are informed by the socio-economic context of poverty and service delivery backlogs. It was shown, for example, that there is room for substantial improvement in municipalities' cost recovery approaches, although, at the same time, municipalities do have a limited revenue base.

The National Treasury regards the financial problems of municipalities as largely administrative problems - that municipalities must just improve their financial management practices. This thesis has shown that the problems are more complex than being managerial. Previous chapters highlighted that the demarcation of local government and the resultant

⁵⁴⁵ Centre for Development and Enterprise. (2003). CDE Roundtable: Local Government in South Africa: Priorities for Action. Number 5. Johannesburg: Centre for Development and Enterprise. SACities Network. (2007) State of Cities Finances Report.

establishment of new municipalities resulted in the amalgamation of different financial management systems and processes. In many cases, it meant that municipalities inherited the debt accumulated in townships and the self-governing territories. The devolution of powers and functions to local government were primarily political executive decisions, and as has been highlighted, this resulted in administrative and organisational restructuring in conjunction with growing functional responsibilities. The argument here is that much of this history underlies the fiscal challenges experienced by municipalities today.

Whether municipalities are successful as institutions of local government is often determined by their financial health or financial sustainability. At its most basic, financially sustainable municipalities are regarded as those municipalities that can meet their expenditures with own revenue, and do not depend on national fiscal transfers. But in the South African situation this is highly unlikely now or in the near future. In fact, this chapter will show that the financial health of a significant number of municipalities is declining in that they are not able to cover their expenditure even if they are supported by national transfers or borrowings. According to the 2009 Division of Revenue Act, municipal expenditures continue to outgrow municipal revenue capacity despite increasing intergovernmental grant allocations. This chapter aims to explore and examine possible reasons for this imbalance, and questions the financial viability of municipalities. The argument is that in order for local government to be an autonomous and independent sphere of government, it needs to be financially self-sufficient. In other words, there can be no devolution of political and administrative authority if municipalities depend on fiscal transfers from central government.

This particular chapter identifies a number of fiscal challenges facing basic service delivery which are often analysed separately from one another. However, it will be shown that the different fiscal problems are interrelated and emerge from the political, administrative and financial dimensions of decentralisation. It will also illustrate how some of the underlying factors contribute to municipalities' general lack of autonomy.

Municipal debt is one of the most obvious indications that the financial viability of municipalities is in question. According to the National Treasury, municipal debt is a result

of inefficiency, corruption and inadequate financial management skills.⁵⁴⁶ However, a number of additional factors will be considered here. For example: remaining service delivery backlogs; increasing service delivery demands; widening revenue and expenditure discrepancies; insufficient service infrastructure maintenance; concurrency and unfunded mandates; theft and non-payment; limited borrowing powers and dependence on grants.

All of these are contributing factors to the escalation of municipal debt, which in turn limit local fiscal autonomy. The objective is to show that the financial challenges facing local government in general, and Category B municipalities more specifically, are a result of broader systemic and socio-economic dynamics, as much as a lack of financial management competence. Such conditions are not conducive to the devolution of local government autonomy.

7.1 Fiscal Challenges to Basic Service Delivery

Municipal debt has become a serious challenge facing local government. As at December 2007, municipalities are owed approximately R44.2 billion in outstanding user fees which amount to 60% of national consumer debt.⁵⁴⁷ Category A municipalities are owed the biggest portion of this debt (57.4%), amounting to R25.4 billion. Category B municipalities are owed R17.9 billion (40.4%) and Category C are owed almost R1 billion.⁵⁴⁸

These figures are high and substantial. The National Treasury estimated that if municipalities were able to collect half of these debts, they would have about 18% more revenue with which to fund the delivery of basic services.⁵⁴⁹ Whelan explains that a situation where payment levels are low, leads to “a depletion of reserves and an increase in a bid to solve cash-flow

⁵⁴⁶ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁴⁷ These are the most up-to-date official figures as presented by the National Treasury in the Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁴⁸ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁴⁹ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

shortages, and an increase in short-term debt.”⁵⁵⁰ This, he argues, would affect municipalities’ ability to access loan capital which may result in services being cut back and, as the chapter on cost recovery concluded, could set in motion a cycle of non-payment and inferior service delivery.⁵⁵¹ Of significance is the fact that the debt of Category B municipalities has increased by R3 billion, from R14.9 billion in December 2006 to R17.9 billion in December 2007.⁵⁵² This is illustrated in percentage terms in Figure 7.2 below.

Figure 7.1 Percentage Consumer Debt by Municipal Category

Source: Adapted from National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

The significant increase in consumer debt of Category B municipalities reiterates the point made in the chapter on cost recovery, where it was argued that the transfer of authority over basic services from Category B to Category C municipalities would result in the former having significantly less access to own revenue. According to the National Treasury, Category A municipalities were owed almost 35% of their total annual budgets, Category B

⁵⁵⁰Whelan, P. (2002). *Local Government Finance Reform*. In Parnell,S., Pieterse, E., Swilling, M. and Wooldrige, D. (2002). Democratising Local Government: The South African Experience. Cape Town: University of Cape Town Press. Page 242.

⁵⁵¹Whelan, P. (2002). *Local Government Finance Reform*. In Parnell,S., Pieterse, E., Swilling, M. and Wooldrige, D. (2002). Democratising Local Government: The South African Experience. Cape Town: University of Cape Town Press. Page 242.

⁵⁵²These figures were published in the 2008 Local Government Budgets and Expenditure Review 2003/04-2009/10. (Published by the National Treasury). No official data exists on current municipal debt, but unofficial reports claim that this figure continuous to increase substantially. For example, Anon. Available at <http://www.capetimes.co.za>. Accessed 21 February 2009.

municipalities 39% and Category C municipalities 11%.⁵⁵³ This is far from the National Treasury's expectation that municipalities would be able to generate 90% of their own revenue.⁵⁵⁴

A large percentage of debt is long overdue. This questions the ability of municipalities to collect outstanding arrears. Municipalities like Msunduzi, Ekurhuleni, the City of Tshwane and the City of Johannesburg, have resorted to writing-off long outstanding consumer debt as part of their debt management strategies, arguing that all avenues to collect these debts have been exhausted, making further debt legal efforts to recover debt expensive and futile.⁵⁵⁵

The amount of debt is not the key concern here. Rather it is how such debt has accumulated. As such, municipal debt becomes a sign of escalating financial unsustainability, making municipalities unviable sub-national entities. This, in turn, diminishes the ability of municipalities to be autonomous as they will become more and more dependent on central government funding.

A number of fiscal challenges facing municipalities in their delivery of basic services will be identified and considered here. These challenges are interrelated and contribute to the escalation of municipal debt.

7.1.1 Remaining Basic Service Delivery Backlogs

Remaining basic service delivery backlogs pose a fiscal challenge for municipalities because they require municipalities to plan for and invest in additional service delivery infrastructure. However, in order to do this effectively, municipalities need to know where the remaining service delivery backlogs are situated and the costs associated with eradicating these. The chapters on administrative decentralisation and cost recovery demonstrated that municipalities often lack the capacity to determine indigence or to calculate the full costs associated with service delivery.

⁵⁵³ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁵⁴ The issue of the capacity of municipalities to generate own revenue was discussed in the chapters on administrative decentralisation and cost recovery.

⁵⁵⁵ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. And SACities Network. (2007). State of Cities Finances Report.

Figure 7.2 illustrates how many households have access to basic services and how many lack them. 8.2% of the 13 million households in South Africa lack access to potable water; 22.9% to basic sanitation; and 27% to basic electricity.

Figure 7.2: Households with Access to Basic Services

Source: Adapted from Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa.

While there is data on how many households have access to particular basic services, there is no specific data on the extent or locality of the remaining backlogs. For example, whether remaining backlogs are located in rural underdeveloped areas and in informal settlements. In the absence of specific data, one is left to make approximations and value-judgements.

Figure 7.3 below, for example, provides no breakdown in actual figures of the number of households with or without access to basic services. However, it does appear (based on the legend) that the outstanding backlogs are mostly situated in predominantly rural areas.

Figure 7.3: Households with Access to Basic Services by Municipal Location

Source: Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Page 13.⁵⁵⁶

If the remaining backlogs are indeed mostly located in predominantly rural areas, then eradicating these backlogs will be more difficult than those that are already served. For example, in some rural areas it is geologically not feasible to provide in-house electricity or flush toilets. In addition, their remoteness makes service delivery as well as infrastructure maintenance expensive. Services charges and debt collection are complicated when households are often indigent and where some have no physical address.⁵⁵⁷

The costs of delivering services in rural underdeveloped areas are higher than in urban areas. The average cost of a single connection for electricity in urban areas, for instance, is approximately R5000 per household, but this rises significantly with the provision in rural or

⁵⁵⁶ This graph was presented by the National Treasury based on STATSA data as well as the 2007 Community Survey, but did not detail the actual number of households.

⁵⁵⁷ Interview with Municipal Councillor. (Msunduzi Municipality). Pietermaritzburg. 13 February 2008.

peri-urban areas, where the average cost of connections is estimated to be R7000 due to the costs associated with servicing outlying areas.⁵⁵⁸ The implication is that the remaining backlogs are relatively more difficult and more expensive to eradicate than those in urban areas. It also makes the provision of free basic services more expensive for municipalities because supplying free water, sanitation or electricity is not merely covering the costs of usage, but also includes the establishment of service delivery infrastructure in areas far removed from current infrastructure, together with the maintenance costs of that infrastructure. Widespread distribution increases infrastructure and administrative costs, especially in the cases of sanitation and water which also incur costs for the erection of waste-water treatment facilities, and so on.⁵⁵⁹ It remains uncertain what the costs would be to eradicate remaining backlogs, and whether such households would qualify for free basic services. The potential of cost recovery may also be minimal since rural areas experience higher levels of poverty and most households would probably be entitled to free basic services. Such factors may contribute significantly to the escalation of municipal debt.

In addition, the data that exists is often inconsistent. One example is the case of how many households have access to basic electricity. Figure 7.4 demonstrates that according to the National Treasury's 2008 Local Government Budgets and Expenditure Review, 80% of households have access to electricity for lighting. However, the Department of Cooperative Governance and Traditional Affairs' 2009 State of Local Government in South Africa Report, indicates that only 73% of households have such access.⁵⁶⁰ This is a discrepancy of 7%; attending to it could impose a severe fiscal strain on the perhaps already precarious financial status of the municipalities concerned.

⁵⁵⁸ Grice, J. (2004). *What has Happened to Free Basic Services?* In Numsa Bulletin. (11). (Available at <http://www.numsa.org.za>).

⁵⁵⁹ Van Vuuren, L. (2009). *Are We Ready For a Sludge Revolution?* In The Water Wheel. Volume 8 (2). (Available at <http://www.wrc.org.za>).

⁵⁶⁰ Both datasets use an approximation of Census 1996, Census 2001 and the 2007 Community Survey.

Figure 7.4: Datasets on Households with Access to Basic Electricity

Source: Adapted from the National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. And the Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa.

Increasing Service Delivery Demands

In urban areas, the challenge is different but also complex. The rapidly growing economy experienced between 2002-2008 has resulted in increased demands for infrastructure and service delivery. These demands are not restricted to residential consumers, since country-wide economic growth has resulted in increased water and electricity demands from private industries too.⁵⁶¹ Existing municipal infrastructure is proving to be limited, strained, and in some cases in need of upgrading or full replacement.⁵⁶² This has caused erratic service delivery, such as power outages, burst pipes and blocked sanitation facilities.⁵⁶³

Rapid urbanisation and the burgeoning of informal settlements forced municipalities to provide basic services as speedily as possible, despite the limited resources available. The services often included the installation of community standpipes, bucket system sanitation, or the provision of pit-latrines, and high mast electricity. Now these communities are demanding better quality services and improved infrastructure, such as in-house water

⁵⁶¹ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁶² National Electricity Regulator South Africa. (2007). Full Audit Report August 2007.

⁵⁶³ Human Sciences and Research Council. (2008). State of the Nation 2008. Pretoria: Human Sciences Research Council Publishers. And Interview with Municipal Councillor. (Msunduzi Municipality). Pietermaritzburg. 13 February 2008.

connections and water-borne sanitation.⁵⁶⁴ However, a number of these settlements are not in suitable physical localities to receive these better quality services.⁵⁶⁵

According to the National Treasury, municipalities in the urban areas have been relatively successful in addressing basic service backlogs in urban areas. However, as attested to by a local government official, cities have rapidly provided basic services to townships and informal settlements in peri-urban areas, but some of this service delivery has become physically unsustainable as infrastructure was haphazardly installed, and in some cases was of inferior quality. Municipalities are now confronted with significant cost pressures for maintaining such ill-planned infrastructure, or upgrading it.⁵⁶⁶

Van Aardt et al identify a continuous growth trend in urban population.⁵⁶⁷ However, the implication of this is not immediately obvious. While urban population growth continues, the average size of households has decreased. This disparity is particularly high in metropolitan areas. Figure 7.5 shows that between 2001 and 2007, metropolitan areas and large Category B municipalities have experienced a 5.7% and 3.8% increase in population size; while Figure 7.6 shows that the average household size has decreased by approximately 12% from 4.0 to 3.6.⁵⁶⁸ This means that the challenge of ongoing population growth will become even more demanding because it is exacerbated by more households which are also forming through the decrease size of a household.

⁵⁶⁴ See Buhlungu, S., Daniel, J., Southall, R. and Lutchmann, J. (Eds.). (2007). State of the Nation: South Africa 2007. Pp.54-65. Pretoria: Human Sciences Research Council Publishers. And Langer, M. *Government Probes Causes of Service delivery Protests*. In Mail and Guardian. 24 July 2009. And Tau, P and Maphumulo, S. *More Service Protests on the Cards* in The Star. 24 July 2008.

⁵⁶⁵ Human Sciences and Research Council. (2008). State of the Nation 2008. Pretoria: Human Sciences Research Council Publishers. And Interview with City Engineer. (Estates Division, Msunduzi Municipality). Pietermaritzburg. 8 February 2007.

⁵⁶⁶ Interview with City Engineer. (Estates Division, Msunduzi Municipality). Pietermaritzburg. 8 February 2007.

⁵⁶⁷ Van Aardt, C. and Lamb, M. (2007). Population and Household Projections 2001-2021. Bureau of Market Research: University of South Africa.

⁵⁶⁸ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 11.

Figure 7.5: Share of Population and Annual Growth Rate by Municipality

National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 11.

Figure 7.6: Average Household Size by Municipality

National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 11.

According to Van Aardt et al, the African population is expected to grow by about 15.4% during the period 2001–2021 (See Appendix 12). African households are expected to increase by about 60.7% over the same period.⁵⁶⁹ Van Aardt et al attribute the declining average in household sizes to factors such as “urbanisation, lower fertility preferences, greater preference for single-person households and household mitosis, where existing African households are split into two or more separate households.”⁵⁷⁰ Such trends increase the demand on urban municipalities for service.

In other words, while service delivery backlogs in urban areas may be lessening in some instances, in others it will increase as long as urbanisation continues to grow and household sizes continue to decrease. In such a situation the national government’s claim that backlogs are close to eradication is misleading as it does not reflect that these backlogs are being replaced by new, and in rural areas more expensive, service delivery demands. The increase in service delivery demands, therefore, adds further financial pressures to municipalities which are trying to meet their service delivery mandate. Calls for additional service delivery infrastructure make municipalities dependent on capital infrastructure grants, such as MIG, which the previous chapter argued, leads to lessening local fiscal autonomy.

7.1.3 Municipal Operating Revenue versus Expenditure

Ever since the inception of the three spheres of government there has been a strong disparity between the spheres’ sources of revenue and their service delivery functions. The chapter on cost recovery highlighted that despite the devolution of cost recovery to municipalities, revenue generation remains limited.

But this is not only an administrative problem. Expenditure that was incurred by the provision of new infrastructure is not always recovered through user fees, since most are targeted at low income households. The chapter on cost recovery demonstrated that low income households tend to return low levels of payment. Low income houses also tend not to

⁵⁶⁹ The rising number of African households is significant since this population group which faces the majority of outstanding service delivery backlogs.

⁵⁷⁰ Van Aardt, C. and Lamb, M. (2007). *Population and Household Projections 2001-2021*. Bureau of Market Research. University of South Africa. Page 4.

consume much water or electricity which means that supplying additional infrastructure does not necessarily result in the generation of additional surcharges that are necessary for sustainable local service delivery.

Table 7.1 provides a breakdown of the average national amounts for municipal operating revenue between 2003/04 and 2009/10. Figure 7.7 illustrates these amounts in percentage terms. What is of significance is that service charges as a source of income have decreased from 49% in 2003/04 to 42.9% in 2009/10 while government grants have increased from 12.2% to 22.3% during the same period. This indicates a decrease in user fees associated with service delivery, and an accompanying increase in central fiscal support.

Table 7.1: Municipal Operating Revenue 2003/04-2009/10 in Rands

R Million	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Property rates	13,980	16,396	17,401	18,521	21,486	22,770	24,136
Service charges	36,146	38,735	40,201	44,498	49,223	51,549	54,777
RSC levies	4,983	7,009	7,604	386	95	0	0
Investment	1,673	2,115	2,357	2,970	3,845	3,818	4,133
Grants	8,980	13,742	17,398	27,223	26,571	28,311	28,491
Own Revenue	8,025	8,784	10,375	11,763	17,184	16,260	16,167
Total Revenue	73,788	86,781	95,336	105,361	118,405	122,710	127,705

Source: Adapted from National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 23.

Figure 7.7: Municipal Operating Revenue 2003/04-2009/10 in Percentage Terms

Source: Adapted from National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

Figure 7.7 illustrates that municipalities are increasingly relying on intergovernmental grants and subsidies. At the same time, it shows that there is currently no indication that service charges can generate surplus funds in order to cross-subsidise service delivery as proposed by the National Treasury. Such a trend is not conducive to increasing local autonomy.

The National Treasury has criticised municipalities for not containing their expenditure costs. This is so, but as this chapter has already illustrated, the growth in expenditure can also be attributed to other factors, such as higher costs of eradicating the remaining service delivery backlogs, or new demands for service delivery infrastructure which incur further losses since they do not yield the requisite levels of payment.

7.1.4 The Maintenance of Service Infrastructure

Closely linked to the widening gap between municipal operating revenue and municipal expenditure revenue is the demand for more or better maintenance of service infrastructure. The National Treasury notes that municipalities fail to adequately budget for the maintenance of capital expenditure.⁵⁷¹ The chapter on cost recovery emphasised the importance of calculating the full costs of delivery, including maintenance costs. The National Treasury's Local Government Budgets and Expenditure Review (2003/04-2009/10), found that most municipalities' expenditure on maintenance tends to be reactive, rather than proactive.⁵⁷² As such maintenance is not incorporated in any routine or regular programme which is linked to managing municipal assets.

There is a disjuncture between the political expectations of national government departments such as those of the Department of Provincial and Local Government, and the Department of Water Affairs and Forestry and calls for financial prudence by the National Treasury. The latter has warned local government not to neglect maintenance:

[T]o ensure sustainable uninterrupted delivery of municipal services and certainty in own revenue streams, municipalities will have to increase their investment in repairs and maintenance. This is even more important for these large cities given the growing demand for services ... and the demands to support an expanding economy.⁵⁷³

The national emphasis is on delivery, despite a lack of resources. The five-year political cycle favours delivery above maintenance. In order to be re-elected into office, local councillors are pressurised to deliver services quickly, quite possibly at the expense of allocating adequate funds to allow for infrastructure maintenance. There are political imperatives involved. There are national political mandates to eradicate backlogs by a certain time - gearing municipal operating expenditures towards service delivery while hardly

⁵⁷¹ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁷² National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁷³ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

catering, if at all, to infrastructure maintenance. The Minister of Provincial and Local Government announced that all municipalities had to eradicate the bucket sanitation system by 2008 (which they did not achieve).⁵⁷⁴ He later pledged that every household should have access to electricity by 2010.⁵⁷⁵

A municipal official attested to numerous conflicts experienced between themselves and politically elected councillors over service provisions. This official claimed that he had warned the municipal council that some proposed service projects are technically and environmentally unfeasible and would prove too costly to install and maintain. Yet such advice was ignored.⁵⁷⁶ He cited an example of the municipal council instructing city engineers to provide water and sanitation infrastructure to an informal settlement area in an attempt to upgrade the area despite the fact that it was located near a wetland. He claims that this infrastructure is unsustainable, and in some locations the sanitation infrastructure has already started to collapse, resulting in sewerage polluting the nearby river.⁵⁷⁷

Municipalities are experiencing widespread pressure on existing service infrastructure in each of the three basic services: water, sanitation, as well as electricity. This, it is argued, is a direct result of years of neglect which have left municipalities with ageing infrastructure which is beyond maintenance, and needs replacing. Collapsing or underperforming service delivery infrastructure results in service disruptions (electricity being the most severe) and would require substantial investment to repair or upgrade.⁵⁷⁸

With regard to water, the National Treasury acknowledges that there has been a growth in water sales, in increased spending on infrastructure investment, as well as more monies for repairs

⁵⁷⁴ Mufumadi, S. (Minister of Provincial and Local Government). (2006). Budget Speech 2006/07. National Assembly, Cape Town.

⁵⁷⁵ Mufumadi, S. (Minister of Provincial and Local Government). (2006). Budget Speech 2006/07. National Assembly, Cape Town.

⁵⁷⁶ Interview with City Engineer. (Estates Division, Msunduzi Municipality). Pietermaritzburg, 8 February 2007.

⁵⁷⁷ Interview with City Engineer. (Estates Division, Msunduzi Municipality). Pietermaritzburg, 8 February 2007.

⁵⁷⁸ SACities Network. (2007) State of Cities Finances Report.

and maintenance of existing infrastructure. However, it notes that this is inadequate.⁵⁷⁹ Figure 7.8 illustrates that investment in new and existing water services infrastructure appears to be lagging behind as it does not correspond to the growth in water sales. This places a strain on existing infrastructure assets to cope with increased service delivery requirements.⁵⁸⁰ In addition, as argued earlier, the increase in the demand for water does not necessarily translate into sales because most of the water supply is either offered at highly subsidised rates in order to attract local economic investment; or it is directed at indigent households which qualify for free basic services.

Figure 7.8: Water Demand and Investment 2002/03-2006/07

National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 106

In addition to water, there is also widespread pressure on existing sanitation systems. Serious allegations have been made that municipalities are not able to manage waste-water treatment

⁵⁷⁹ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. This review only provided a graphic illustration, but did not elaborate on the actual amounts.

⁵⁸⁰ Interview with Umgeni Water Employee. Pietermaritzburg, 26 March 2009. And National Treasury. Intergovernmental Fiscal Review (2008).

facilities. Media reports revealed a high number of municipalities where water purification works had badly deteriorated and in some instances totally collapsed.⁵⁸¹ Other reports claimed that contaminated water was being distributed to users in certain areas.⁵⁸² In the 2008 Dusi River Marathon canoe race between Pietermaritzburg to Durban (in KwaZulu-Natal), a number of participants suffered from chronic diarrhoea and/or vomiting after the race. Water quality tests done along the Umsunduzi River nine days before the race showed E-Coli levels measuring up to 115,000 per 100ml.⁵⁸³

In September 2007, and in the first few months of 2008, thousands of fish and other marine life washed up dead in and around the harbour in Durban.⁵⁸⁴ The cause was identified as a sewage overflow into the Umhlatuzana river catchment area due to a lack of sanitation infrastructure, and from delays in fixing sanitation blockages.⁵⁸⁵

Improved pit latrine toilets (VIPs) are currently regarded as an acceptable minimum level of sanitation. Besides installing the VIPs, municipalities must also empty each VIP at least every ten years, which some municipalities have not been able to do.⁵⁸⁶ This example illustrates that the provision of basic services, whether 'at RDP level' or 'above RDP level', has long-term infrastructure maintenance implications. In fact, some argue that service delivery 'at RDP level' (such as VIPs) incur higher maintenance costs than services provided 'above RDP level' (such as waterborne sewerage systems).⁵⁸⁷

⁵⁸¹ Carte Blanche. 19 April 2009.

⁵⁸² Denny-Dimitriou, J. *A River in Crisis* in Natal Witness. 15 February 2008. And Denny-Dimitriou, J. *Umgeni Water Woes* in Natal Witness. 19 April 2008. And Denny-Dimitriou, J. *Clean Up Rivers Or Else'* in Natal Witness. 5 June 2008. And Turrell, D. *Stomach-Churning Stench* in Natal Witness. 2 February 2009.

⁵⁸³ The international world health standard for drinkable water is 150 per 100ml. Denny-Dimitriou, J. *A River in Crisis* in Natal Witness. 15 February 2008. And Denny-Dimitriou, J. *Umgeni Water Woes* in Natal Witness. 19 April 2008. And Denny-Dimitriou, J. *Clean Up Rivers Or Else'* in Natal Witness. 5 June 2008. And Turrell, D. *Stomach-Churning Stench* in Natal Witness. 2 February 2009.

⁵⁸⁴ Editorial. In Natal Mercury. 12 December 2007.

⁵⁸⁵ <http://allafrica.com/200801100842.html>. Accessed May 2008.

⁵⁸⁶ Van Vuuren, L. (2009). *Are We Ready For a Sludge Revolution?* In The Water Wheel March/April. (Available at <http://www.wrc.org.za>).

⁵⁸⁷ Van Vuuren, L. (2009). *Are We Ready For a Sludge Revolution?* In The Water Wheel. Volume 8 (2). (Available at <http://www.wrc.org.za>).

The state of South Africa's electricity infrastructure has received widespread criticism over the last few years. According to the National Electricity Regulator of South Africa (NERSA), demands for electricity have increased significantly, and reports have indicated that investment in electricity infrastructure is not accompanied by expenditure on maintenance. This is demonstrated in Figure 7.9.

Figure 7.9: Electricity Demand and Investment 2002/03-2006/07

National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 125.

Electricity infrastructure, like water and sanitation, is under severe strain, and given the increased demand for electricity, will not decrease.⁵⁸⁸ Besides investing in capital infrastructure projects, municipalities are expected to make funds available for the maintenance and refurbishment of existing assets. In recent years, some municipalities have experienced technical problems and power outages due to failures in existing distribution

⁵⁸⁸ National Electricity Regulator South Africa. (2007). Full Audit Report.

lines and networks, which are separate from Eskom's.⁵⁸⁹ Older networks are being increasingly damaged by supply disruptions, leading to more frequent distribution failures.

The National Energy Regulator of South Africa (NERSA) indicated that electricity distribution equipment is ageing and unreliable. They too argued that few municipalities have infrastructure and asset databases, claiming that “many rely on their corporate memory for their maintenance strategy.”⁵⁹⁰ Most equipment is overloaded due to unplanned or unanticipated development programmes. Municipalities have made insufficient provision for the refurbishment of electricity networks, causing black-outs or in some instances power plants to blow up.⁵⁹¹

NERSA claims that maintenance is uncontrolled and inadequate, and that this is leading to a substantial loss of sales. The national average of technical electricity losses emanating from a lack of network maintenance amounts to approximately R4 billion annually.⁵⁹² Concerns were raised about the high vacancy rates and ongoing loss of technical expertise in municipalities.⁵⁹³

In short, a great deal of existing basic service delivery infrastructure is overloaded. The neglect of service infrastructure points to municipalities trying to keep up with the pace of continuously growing service delivery demands. The chapters on administrative decentralisation and cost recovery explained that many service delivery mandates emanate from national and/or provincial governments but these mandates are often not accompanied by sufficient funds.

The national service delivery mandates place additional strain on the existing service delivery infrastructure of municipalities. It also increases the burden of maintaining infrastructure, all of which are a considerable financial burden.

⁵⁸⁹ Eskom is a public utility for electricity and is owned by the government of South Africa. Eskom is responsible for 95% of electricity supply, including the generation, transmission and distribution of electricity.

⁵⁹⁰ National Electricity Regulator South Africa. (2007). Full Audit Report. Page 7

⁵⁹¹ National Electricity Regulator South Africa. (2007). Full Audit Report.

⁵⁹² National Treasury. (2009). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁹³ National Electricity Regulator South Africa. (2007). Full Audit Report.

It was argued earlier on in this chapter that municipalities are facing increasing demands for more services, which means that municipalities need to expand their service infrastructure. Calls for improving infrastructure maintenance add to the financial burden of municipalities. This reiterates the point made in the previous chapter regarding the need for the Equitable Share to lead to the transfer of adequate funds in order to assist municipalities with the operating and maintenance costs emanating from the installation of infrastructure, which is funded by conditional infrastructure grants, such as MIG. The maintenance of service infrastructure presents a significant financial burden for municipalities, which will only increase as more and more capital infrastructure investment takes place in local municipalities. It is a burden which cannot be evaded since municipalities are constitutionally responsible for providing everyone with access to quality and sustainable basic services.

7.1.5 Concurrency and Unfunded Mandates

The legislative and policy framework in South Africa has assigned a degree of political, administrative and financial authority to local government. It also protects local government as autonomous entities with regard to their constitutionally mandated responsibilities. But as the previous chapter on fiscal decentralisation concluded, national departments intervene directly in municipal affairs through the use of conditional grants that prescribe to municipalities what basic services to deliver to the poor.

The previous chapter showed that fiscal decentralisation is difficult to pursue in areas of shared or concurrent constitutional responsibilities. In addition, some local government services are mandated by the national government to be provided for free. Municipalities complain that such mandates mean that their revenue expenditure is limited to providing basic service delivery infrastructure and maintaining it regardless of whether user fees can be collected.⁵⁹⁴ The State of the Cities Finances Report (2007) noted that national and provincial governments' conditional fiscal transfers were often directed to locations that were not part of the broader spatial development or infrastructure plans of municipalities.⁵⁹⁵

⁵⁹⁴ SALGA. (2009). Comments on the FFC Recommendations on the Division of Revenue for 2010/11. Presented at the Select Committee on Finance. (National Legislature) 6 August 2009. (Available at <http://www.salga.net>).

⁵⁹⁵ SACities Network. (2007). State of Cities Finances Report.

This is especially prevalent in Category B municipalities which are not only affected by national and provincial service delivery mandates, but also by mandates emanating from Category C municipalities. As it currently stands, the decentralisation framework is adjustable and allows for the national government Minister of Provincial and Local Governments to adapt this framework as and when deemed necessary. As the chapters on political decentralisation and administrative decentralisation explained, the continuous lack of clarity on the power and responsibilities of these two different tiers of local government translates into operational uncertainties.

One such example is the provision of water and sanitation. Section 4B of the Constitution lists water and sanitation services (limited to potable water supply systems and domestic wastewater and sewage disposal systems) as a local government function. All Category A (metropolitan) municipalities are defined as water authorities, whereas Category B (local municipalities) are so authorised in certain instances and Category C (district) municipalities in others. The two-tiered local government system requires that powers and functions be divided between Category B and C municipalities in order to avoid duplication and coordination problems. However, an asymmetric and inconsistent approach has been implemented in relation to water and sanitation.

The sharing of the water services function between Category B and C municipalities has been contentious on a number of fronts. The distinction between service authorities and service providers is fluid and shifts from time to time between district and local municipalities. From a financial position, it has resulted in problems in the allocation of resources through the intergovernmental fiscal system. The current practice is that only authorised municipalities are recipients of the national grant for water and sanitation. This becomes a problem in cases where authorised district municipalities delegate the responsibility for service provision to local municipalities but without transferring adequate funds. Furthermore, such funding is often not transferred timeously between service authorities and service providers.

In addition, concurrent or shared functions between different spheres of government are often not clearly delineated, thus causing confusion as to where the responsibilities for expenditure lie. Before 1994, the Department of Water Affairs and Forestry provided water services schemes in predominantly rural and poor areas across South Africa. These water schemes have long been a problem of intergovernmental relations. With the constitutional transfer of

water delivery functions to local government, water schemes were no longer the sole responsibility of the Department of Water Affairs and Forestry, but instead became a concurrent function. The transfer of responsibilities to local government entailed the transfer of assets and staff as well as increased municipal operating costs. Fifteen years later, the Department of Water Affairs and Forestry is still administering some of these schemes, while others are in the process of being transferred to municipalities.⁵⁹⁶ SALGA emphasised that for those schemes which had been transferred, municipalities received no funding for investing in refurbishing and replacing ageing infrastructure which most water schemes need desperately.⁵⁹⁷

The chapter on administrative decentralisation highlighted that with the passing of the Municipal Structures Amendment Act, the assignment of bulk service delivery functions remains open to adjustment, making future municipal budgeting difficult. This uncertainty results in financial managers struggling to budget appropriately.⁵⁹⁸ In some instances, Category B municipalities have been delivering water at their expense on behalf of the district municipalities, but the financial responsibility for infrastructure maintenance remains unclear, leading to neither districts nor local municipalities taking responsibility.

Related to the problem of cross-sectoral service delivery is the issue of unfunded mandates. According to Shah et al unfunded mandates are seen as a shift of social expenditures downward without providing additional sources of revenue:

*These largely unfunded mandates have therefore been seen as attempts by national governments to shift deficits downward, creating disharmony and conflicts among governments at different levels.*⁵⁹⁹

⁵⁹⁶ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁵⁹⁷ SALGA. (2009). Comments on the FFC Recommendations on the Division of Revenue for 2010/11. Presented at the Select Committee on Finance. (National Legislature) 6 August 2009. (Available at <http://www.salga.net>).

⁵⁹⁸ Ministerial Advisory Committee. (2001). Interim Report on the Challenges facing Local Government.

⁵⁹⁹ Shah, A. and Thompson, T. (2004). *Implementing Decentralised Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. In World Bank Policy Research Working Paper 3353.

Sentiments expressed by Shah et al are similar to those voiced in the numerous submissions made by Category B municipalities to the Ministerial Advisory Committee,⁶⁰⁰ and confirmed by SALGA.⁶⁰¹ Municipalities are expected to be self-funding through levying service charges and collecting revenue from property rates. However, given the service delivery backlogs and extended expenditure responsibilities, such as the Free Basic Services mandate, municipalities increasingly rely on a range of national and/or provincial transfers to meet these shortfalls. These shortfalls are referred to as ‘unfunded mandates’. Municipalities have been complaining about unfunded mandates since the sphere of local government was first established in 1996. Most of the time, this is justified. The complaint is that the delegation of powers and responsibilities to municipalities has not been accompanied by sufficient financial revenue, which has resulted in their operating expenditure costs exceeding their operating revenue, giving rise to administrative problems which local financial officers are meant to solve.

Unfunded mandates also refer to the delegation of provincial and/or national government functions to local government without the necessary funding. It refers to the impact of provincial or national government service delivery projects which municipalities must service and maintain. The previous chapter on fiscal decentralisation argued that intergovernmental fiscal relations remain largely centralised. National departments regulate national norms and standards in areas of concurrent responsibilities and dictate that municipalities must deliver services of a particular quality and quantity. Doing so imposes explicit spending obligations on municipalities.

SALGA argues that the biggest failing of South Africa’s current local government fiscal relations system is the lack of alignment between functions and funding.⁶⁰² There are a number of examples where municipalities provide services which other spheres are meant to offer, such as libraries (which are a provincial function). Other functions have service maintenance implications such as housing which is a national government function. Yet the

⁶⁰⁰ Ministerial Advisory Committee. (2001). Interim Report on the Challenges facing Local Government.

⁶⁰¹ SALGA. (2009). Comments on the FFC Recommendations on the Division of Revenue for 2010/11. Presented at the Select Committee on Finance. (National Legislature) 6 August 2009. (Available at <http://www.salga.net>).

⁶⁰² SALGA. (2009). Comments on the FFC Recommendations on the Division of Revenue for 2010/11. Presented at the Select Committee on Finance. (National Legislature). 6 August 2009. (Available at <http://www.salga.net>).

provision of basic service infrastructure to housing developments, and the maintenance of housing programmes, have increasingly become the responsibility (and problem) of local government.

Table 7.2 shows a substantial increase in the capital expenditure costs on basic services incurred by municipalities country-wide. Water and sanitation remains the largest local expenditure. Of specific significance are municipalities' rapidly increasing housing expenditure costs. Municipalities are currently spending approximately 11% of their total expenditure on housing infrastructure, which is more than that spent on electricity.⁶⁰³ This reveals the obligations that have been incurred for expenditure that is associated with the delegation of a function which, in legal terms, is not a local government responsibility.

Table 7.2 : Municipal Capital Expenditure 2003/04 to 2008/09

R Million	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Water & sanitation	1,839	2,925	4,014	4,957	10,397	9,434
Electricity	1,267	1,599	2,295	2,725	4,426	4,255
Housing	658	718	658	1,269	3,893	4,586
Roads & stormwater	1,775	1,751	2,517	3,222	5,536	6,466
Other	5,157	6,329	7,747	8,718	14,484	14,510
Total	10,696	13,323	17,232	20,891	39,736	39,252

National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

SALGA pointed out that there is no clarity on how to fund municipalities for the operating costs associated with the provision of services related to concurrent functions.⁶⁰⁴ Functions that are not local government functions (such as housing) are currently assigned to local government by way of sectoral legislation which takes place in isolation of the fiscal

⁶⁰³ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁶⁰⁴ SALGA. (2009). Comments on the FFC Recommendations on the Division of Revenue for 2010/11. Presented at the Select Committee on Finance. (National Legislature). 6 August 2009. (Available at <http://www.salga.net>).

framework for intergovernmental transfers.⁶⁰⁵

The FIFA World Cup has highlighted some examples of intergovernmental tensions over fiscal decentralisation and the assignment of revenue to provinces and municipalities. In the Western Cape Province, the Cape Town metropolitan municipality refused to go ahead with construction for a stadium until the province provided the agreed R500 million, while the city would fund the remaining R1bn.⁶⁰⁶ It remains to be seen whether the Equitable Share allocation will continue to be distributed to municipalities in lieu of operating costs associated with maintaining FIFA infrastructure after the World Cup event. In theory there is no obligation to do so since the infrastructure does not pertain to the provision of basic services. (If this does not happen, the FIFA infrastructure could be regarded as yet another unfunded mandate).

Theories on fiscal decentralisation suggest that fiscal autonomy depends on responsibilities for expenditure being closely linked to sub-national government units' allocated powers and functions, which in South Africa means in alignment with Schedule 4 and 5 of the Constitution. However, experience has shown that when service delivery functions are shared between different spheres, or between different municipal categories, the responsibilities for expenditure and revenue sources become uncertain. The argument here is that under circumstances where municipalities are already faced with escalating municipal debt and outstanding basic service delivery needs, the delegation of functions by higher levels of government not only adds to the financial pressures of municipalities, but also reinforces hierarchical service delivery arrangements – thus reducing local autonomy.

7.1.6 Theft and Nonpayment

Table 7.3 summarises water losses experienced in 2005.⁶⁰⁷ It indicates that water losses are due to a combination of nonpayment, administrative incapacity, illegal connections and inferior infrastructure maintenance, with the majority attributed to illegal connections or

⁶⁰⁵ SALGA. (2009). Comments on the FFC Recommendations on the Division of Revenue for 2010/11. Presented at the Select Committee on Finance. (National Legislature). 6 August 2009. (Available at <http://www.salga.net>).

⁶⁰⁶ Anon. Available at <http://www.capetimes.co.za>. Accessed 21 February 2009.

⁶⁰⁷ There is no current data on the total losses from municipal water reticulation. These are the figures referred to by the National Treasury in 2009.

water theft.⁶⁰⁸ For example, it was estimated that 70% of the total water losses in medium-to-high income areas was due to leakage on ‘service connections up to point of customer meter’.⁶⁰⁹ This is understood to refer to the illegal bypassing of the water consumption meter. In low income areas, 55% of total water losses stemmed from unbilled meter consumption, which is an indication of ineffective administration.

Table 7.3: Causes of Water Losses

	Medium-to-high income areas	Low income areas
Arrears (nonpayment)	3%	10%
Unbilled meter consumption (ineffective administrative)	2%	55%
Unbilled unmetered consumption (administrative and/or free community supply)	2%	- (free community supply)
Unauthorised consumption (illegal connections)	1%	11%
Customer meter inaccuracies (administrative)	5%	1%
Leakage on service connections up to point of customer meter (illegal bypassing)	70%	18%
Leakage on transmission and distribution mains (infrastructure maintenance)	16%	3%
Leakage on overflows at storage (infrastructure maintenance)	1%	2%

Source: National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 105.

With regard to electricity, it has been estimated that 35% of revenue is lost in the provision of electricity provided in residential areas due to illegal connections.⁶¹⁰ This amounts to R2.8 billion not being paid annually.⁶¹¹ Yelland argues that illegal electricity usage amounts to

⁶⁰⁸ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁶⁰⁹ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 105.

⁶¹⁰ Parker, F. *House Calls with Pliers*. In Mail and Guardian. 23-29 October 2009.

⁶¹¹ No figures exist on how much electricity is lost due to administrative incapacity. In fact, while the National Treasury’s 2009 Local Government Budgets and

10% of the national demand. The issue of electricity theft and nonpayment is contentious at present because of the recent tariff increase. The National Electricity Regulator of South Africa (NERSA) in October 2009 called for a 45% tariff hike in the next three years in addition to the 31.3% tariff increase implemented in June 2009 in order to meet increasing demands for electricity.⁶¹² Yelland argues that if electricity theft and mismanagement were addressed, then there would be no need for such drastic tariff increases.⁶¹³

The significance of the extent of water and electricity revenue losses is that it has a serious impact on municipalities' operating revenue. As the chapter on cost recovery explained, surcharges associated with water and electricity are a major source of municipal revenue, which municipalities rely on for the cross-subsidisation of other services. Losses are an indication of municipalities' general lack of administrative capacity to oversee and implement cost recovery mechanisms, but the extent of illegal water and electricity connections also highlights the degree of nonpayment and/or indigence. Such factors contribute to municipalities' escalating debt problems, which add significantly to the unsustainability of basic service delivery, thus threatening the overall financial viability of municipalities in the long term.

These types of administrative challenges all translate into financial shortcomings. Consequently, municipalities become increasingly dependent on intergovernmental fiscal grants. This chapter has already noted that under such circumstances, local fiscal autonomy will only continue to diminish.

7.1.7 Limited Borrowing Powers and Grant Dependence

According to the National Treasury (and the literature on fiscal decentralisation), municipalities should be largely self-financing.⁶¹⁴ Municipalities, as indicated previously, are

Expenditure Review details water losses, it does not provide comparable data on electricity losses.

⁶¹² Parker, F. *House Calls with Pliers*. In Mail and Guardian. 23-29 October 2009.

⁶¹³ Yelland, C. *Eskom wants to up Tariffs*. In Business Report. 9 October 2009.

⁶¹⁴ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. And Bahl, R. and Linn, J. (1992). Urban Public Finance in Developing Countries. Pp. 385-427. New York: Oxford University Press. And Bird, R. (1993). *Threading the Fiscal Labyrinth: Some Issues in Fiscal Decentralisation*. in National Tax

regarded as having the ability to generate up to 90% of their own revenue.⁶¹⁵ As such, the National Treasury argues that local governments have a relatively substantial revenue base. The bulk of their resources can be raised from local taxes and service charges. Income can be generated via property rates and service fees such as water, electricity and sanitation.⁶¹⁶ However, the chapter on cost recovery showed that for a number of reasons most municipalities have not been able to raise adequate revenue to offset, for example, the costs associated with the extent of indigence and municipalities' mandate to provide free basic services.

The National Treasury is calling on creditworthy municipalities to explore opportunities for leveraging private finance for the expansion and delivery of services.⁶¹⁷ Levels of borrowing are relatively low. Prior to 1994, the national government took responsibility for sub-national borrowings. This no longer applies. The borrowing powers of provincial and local governments have been sharply reduced. According to Section 230 of the Constitution a municipality may raise loans for capital expenditure but not for current expenditure. Borrowing powers are limited by the requirement that borrowings do not fund budget deficits. This means that the Constitution effectively "prohibits deficit budgeting at the local sphere".⁶¹⁸ The Municipal Finance Management Act (MFMA) stipulates that in the interest of macro-economic policy, national government needs to approve loan agreements and supervise debt management at provincial and local level.⁶¹⁹

The MFMA further limits borrowing to local credit markets,⁶²⁰ prohibiting loans in foreign currencies in order to minimise municipal exposure to external market volatility. Theoretically, direct administrative restrictions like central government control and approval

Journal, Volume 46 (18). Pp. 207-228. And Oates, W.E. (1993). *Fiscal Decentralisation and Economic Development*. in National Tax Journal, Volume 46 (18). Pp. 237-243.

⁶¹⁵ Department of Finance. (1998). The Introduction of an Equitable Share of Nationally Raised Revenue for Local Government.

⁶¹⁶ This was explored in the chapter on cost recovery.

⁶¹⁷ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁶¹⁸ Section 230(a) of the Constitution of South Africa. (Act 108 of 1996).

⁶¹⁹ The Municipal Financial Management Act. (Act 53 of 2003).

⁶²⁰ There are currently two main lending institutions: the Development Bank of Southern Africa (DBSA) which is public sector lending institution, and the Infrastructure Finance Corporation (INCA) which is a private sector lending institution.

for local government borrowing is inconsistent with fiscal decentralisation.⁶²¹ However, in South Africa's situation, it may be appropriate to place strict limitations on, or even prohibit, sub-national governments accessing foreign capital markets as South Africa's local economy is susceptible to short-term currency speculators and international volatility.

The literature on fiscal decentralisation promotes local government borrowing in order to finance capital projects. These projects have long-term benefits, and it is reasonable that they are paid for as they are being utilised. It is claimed that not to allow this form of financing is to introduce a bias against capital spending in favour of consumption spending, which is not in the interest of developing local governments in low income or transition countries.⁶²² As a result of these restrictions on financial borrowing, municipalities are experiencing a growing reliance on intergovernmental grant allocations.

Yemek alludes to a worrying trend where municipalities are beginning to pledge future Equitable Share allocations as a means of qualifying for loans from lending institutions. Equitable share allocations are meant to cover operating expenditures associated with the provision of basic services. He warns that in case of defaulting on debt, this practice could lead to massive underprovision of basic services.⁶²³

Figure 7.10 illustrates that the value of grant revenue is on the increase while municipal revenue is on a downward curve. The implication of this trend is that it depicts municipalities as being inadequate at recovering costs or in managing their own finances - which, in turn, portrays municipalities as potentially risky clients for lending institutions.

⁶²¹ Oates, W.E. (1993). *Fiscal Decentralisation and Economic Development*, in National Tax Journal, Volume 46(18). Pp. 237-243.

⁶²² Oates, W.E. (1993). *Fiscal Decentralisation and Economic Development*, in National Tax Journal, Volume 46(18). Pp. 237-243.

⁶²³ Yemek, E. (2005). Understanding Fiscal Decentralisation in South Africa. Cape Town: Institute for Democracy in Africa (IDASA).

Figure 7.10: Municipal Revenue and Grant Revenue

Source: National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 52.

The credit worthiness of municipalities is integrally linked to the extent to which they rely on government grants. Figures 7.11, 7.12 and 7.13 illustrate the degree of reliance on grants according to the three municipal categories. These figures identify a large variation between the different categories of municipalities and their capacity for generating own revenue. Municipalities vary widely in their revenue generating abilities - from 97% in the metropolitan municipalities to 3% in small and rural municipalities.⁶²⁴ The chapter on cost recovery argued that each category of municipality was characterised by different levels of poverty, service delivery backlogs, number of households, employment rates and/or property values. These variations influence the ability of municipalities to generate their own revenue as well as collect user fees.

According to Figure 7.11, metropolitan councils are able to generate substantial revenue from property rates. Of the six Category A municipalities, only two do not rely on intergovernmental grants. However, Figures 7.12 and 7.13 indicate that the majority of local and district municipalities rely heavily on intergovernmental grants. Category C municipalities, in particular, have a limited resource base. Property values here are far less

⁶²⁴ IDASA. (2007). Budget Brief 2007/08.

than in metropolitan areas. Category C municipalities are often characterised by high unemployment rates, and people are truly unable to pay for service charges.⁶²⁵

Figure 7.11: Grant Dependence of Category A Municipalities (Total of 6)

Source: Adapted from Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa.

Figure 7.12: Grant Dependence of Category B Municipalities (Total of 231)

%	2004/05		2005/06		2006/07		2007/08		2008/09		2009/10	
30%	129	55.8%	142	61.5%	153	66.2%	154	66.7%	159	68.8%	163	70.6%
50%	70	30.3%	83	35.9%	98	42.4%	98	41.6%	102	44.2%	108	46.8%
75%	28	12.1%	33	14.3%	41	17.7%	37	16%	38	16.5%	47	20.3%
total	231	100%	231	100%	231	100%	231	100%	231	100%	231	100%

Source: Adapted from Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa.

⁶²⁵ SACities Network. (2007). State of Cities Finances Report.

Figure 7.13: Grant Dependence of Category C Municipalities (Total of 46)

%	2004/05		2005/06		2006/07		2007/08		2008/09		2009/10	
30%	37	80.4%	33	71.7%	43	93.5%	40	87%	41	89.1%	43	93.5%
50%	28	60.9%	22	47.8%	40	87%	36	78.3%	38	82.6%	40	87%
75%	-	-	1	2.2%	23	50%	20	43.5%	24	52.2%	31	67.4%

Source: Adapted from Department of Cooperative Governance and Traditional Affairs. (2009). *State of Local Government in South Africa*.

Although it is difficult to compare categories of municipalities with one another, it is clear that all categories of municipalities experience growing revenue shortages and therefore will remain dependent on intergovernmental fiscal transfers; a dependence which will compromise the local autonomy of every category of municipality.

7.1.8 Financial Management Capacity

The National Treasury and Auditor-General continuously identify municipalities' weak financial management practices.⁶²⁶ According to the National Treasury, financial management comprises four elements: (i) planning and budgeting; (ii) revenue and expenditure management; (iii) reporting; and (i) oversight. Schoeman argues that municipalities lack capacity in all four.⁶²⁷ However, this chapter has shown that some of these shortcomings emanate from a combination of factors, and cannot singlehandedly be

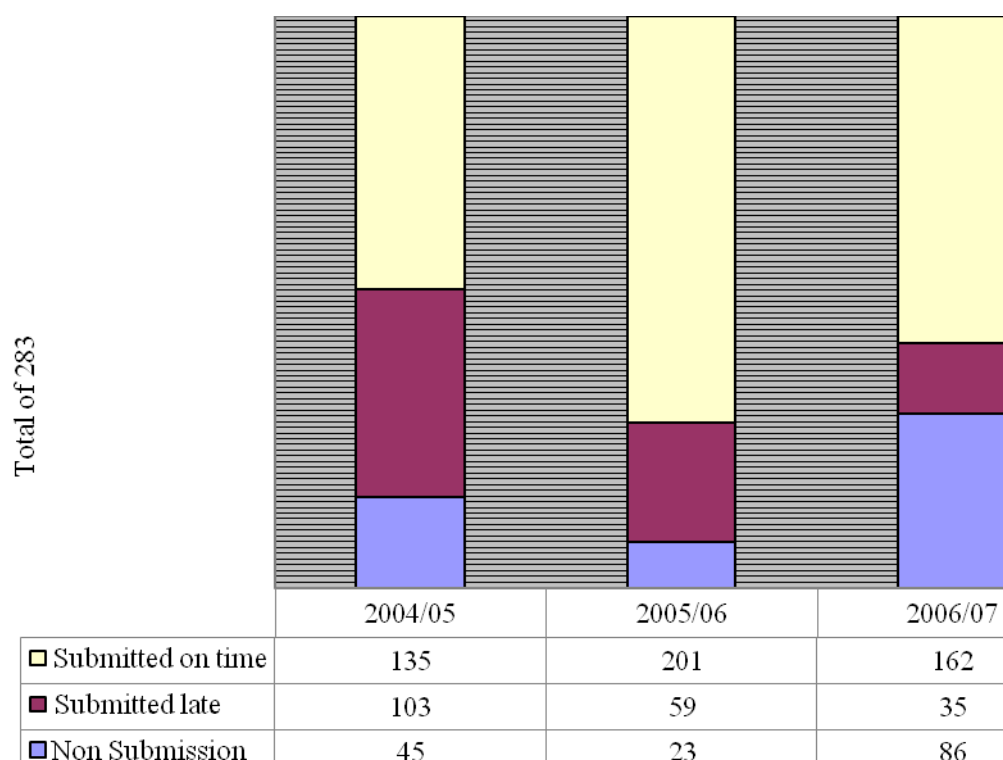
⁶²⁶ See Auditor-General *Annual Report 2007-2008*. And National Treasury. (2009). *Local Government Budgets and Expenditure Review 2003/04-2009/10*.

⁶²⁷ Schoeman, N.J. (2006). *Rethinking Fiscal Decentralisation in South Africa*. In *Journal of Public Administration*. Volume 41(2). Pp. 110-127.

ascribed to incompetence in financial management. There are a number of elements that contribute to this 'incompetence', with a lack of suitably qualified personnel being only one of many.

The National Treasury reports that there is ongoing lack of any significant improvement in the credibility of municipal budgets.⁶²⁸ It has also identified concerns regarding municipalities' submission of their annual financial statements. Figure 7.14 illustrates that there are some inconsistent tendencies. For example, there has been an increase in the submission of financial statements on time - from 135 (48%) in 2004/05 to 162 (57%) in 2006/07. But at the same time there has been a substantial growth in non-submission - from 45 (16%) in 2004/05 to 86 (30%) in 2006/07.

Figure 7.14: Submission of Annual Financial Statements to the Auditor-General



Source: National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. Page 166.

The increasing gap between expenditures and revenue; the lack of budgeting for maintenance allocations; non-payment; inappropriate data-capturing; and debt management strategies - all

⁶²⁸ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

highlight the importance of having suitably qualified personnel capable of implementing rigorous financial management practices. It was estimated in 2008 that 43 municipalities are under investigation for corruption and maladministration.⁶²⁹ Posts for Chief Financial Officers (CFOs) in 63 of municipalities are currently vacant, some having been so for more than four years.⁶³⁰ This amounts to about one-fifth of all municipalities. Given the lack of suitably qualified personnel, high vacancy rates, and inadequate auditing procedures, it becomes quite understandable why municipalities are battling to implement effective financial management and accounting practices.

Conclusion

This chapter has identified a number of underlying factors that inform some of the fiscal challenges that municipalities face. The argument here is that these issues cannot be analysed separately from one another. For example, statistics presented by the Auditor-General on the lack of credibility of municipal budgets cannot be examined in isolation from SALGA's critique of unfunded mandates or rising expenditure obligations. Such issues are interrelated and explain to a large extent the underlying causes of escalating municipal debt.

While many municipalities do lack financial management expertise, this chapter has shown that ongoing issues like persistent service delivery backlogs, widening revenue and expenditure ratios, unpredictable revenue streams, and a growing reliance on intergovernmental fiscal transfers all contribute to municipal budgeting processes being less than straightforward.

The instruction from on high is that local governments need to improve their financial management, budgeting and cost recovery. The national message is that local governments must contain their operating expenditure based on their operating revenue, and that this will lead to financial sustainability. The most basic interpretation of financial sustainability means having enough revenue to cover expenditure. Put simply: operating expenditures should not be allowed to exceed operating revenue. However, this chapter has shown that the discrepancy between operating revenue and expenditure is not due primarily to financial

⁶²⁹ Doman, W. Democratic Alliance Press Release. September 2008. (Available at <http://www.da.org.za>).

⁶³⁰ Doman, W. Democratic Alliance Press Release September 2008. (Available at <http://www.da.org.za>).

mismanagement or incapacity. There are real trends in losses of revenue and increases in expenditure which are beyond local government control. The reality in most municipalities is that there is a large number of residents who simply do not pay, or are too poor to pay, for services despite different cost recovery mechanisms. Limited financial management capacity together with low levels of service payments translate into a number of fiscal challenges for basic service delivery.

Reports conclude that municipalities lack financial management expertise, compounded in some instances by a lack of political will to enforce unpopular debt collection processes, within a confused or unclear administrative system of powers and functions.⁶³¹ All these combine to threaten the financial viability of a municipality. Financial viability and sustainability are necessary if local municipalities are to meet their constitutional and legislative responsibilities.⁶³² Operating expenditures that are higher than revenue; ailing infrastructure; decreasing intergovernmental grants; and minimal financial management expertise, are all factors contributing to increased municipal debt and thereby threaten the financial viability of municipal service delivery.

This chapter has argued that the severity of municipal debt is challenging municipalities beyond their financial limitations and control. Under such circumstances local fiscal autonomy is severely constrained by the dependence of municipalities on national intergovernmental fiscal transfers. As long as this dependence continues, devolution is in practice non-existent, and delegation and deconcentration will continue to typify the nature of fiscal decentralisation in South Africa.

⁶³¹ SaCities Network. (2007). State of Cities Finances Report. And SaCities Network. (2009). The State of African Cities.

⁶³² Oates, W.E. (1993). *Fiscal Decentralisation and Economic Development*, in National Tax Journal, Volume 46 (18). Page 239.

CHAPTER EIGHT

CONCLUSION

Introduction

This concluding chapter has three objectives. Firstly, it will reflect critically on the apparent disjuncture in South Africa between decentralisation as presented in the constitutional and policy framework and how decentralisation has been put into effect in practical terms. Secondly, it aims to illustrate that a number of unresolved governance issues will continue to diminish the autonomy of local municipalities. And thirdly, it will identify some of the gaps in research that have come to the fore during the course of this study and how these gaps warrant further investigation and more critical consideration.

8.1 Assessing Decentralisation

While the objective of this study is not to assess the extent of decentralisation in South Africa, it does investigate the nature of political, administrative and financial decentralisation in South Africa. The intention is to show to what extent the constitutional expectations have been met. In doing so, it highlights some of the structural gaps and contradictions in the current system, which contribute to a broader understanding of the many basic service delivery challenges facing local government in South Africa.

8.1.1 Political Decentralisation

The legislative policy framework for decentralisation in South Africa is well-established. With regard to the political dimension, South Africa has a unitary and decentralised system of government. The 1994 post-apartheid system created three spheres of government: national, provincial and local. The national legislature (or Parliament) comprises two houses: a National Assembly (Cabinet), and a National Council of Provinces (NCOP). The latter has representatives from provincial legislatures and organised local government (SALGA). Provinces are accountable to provincial legislatures, and local governments to local municipal councils. The system of election at the national and provincial level is one of proportional

representation, whilst at the local level, there is a mix of directly elected and proportional representation.⁶³³

Table 8.1 presents key measures of political decentralisation (as presented in the chapter on conceptualising decentralisation) and reflects these in relation to South Africa.

Table 8.1: Measures of Political Decentralisation

Theoretical Measure	In Practice
Is there a constitutional safeguard for local government?	Yes.
Is there substantial local input in national decision-making processes?	No.
Are political parties organised along national or local lines?	Political parties are organised along national lines.
Are local councils elected by local constituents?	Yes.
Are the heads of local councils elected by local constituents?	No.
Is the administrative head or chief local operating officer elected by local council?	No. He/She is appointed by the executive head of the local council.
Are there effective mechanisms for popular participation?	No.
Are there provisions for popular recall of local officials?	No.
Is there contestability in local elections?	Yes, although negated by the dominance of the ANC.
Is there popular participation in local budgeting?	No.

⁶³³ Van Niekerk, D., Van Der Walldt, G. and Jonker, A. (Eds.). (2001). Governance, Politics and Policy in South Africa. Cape Town: Oxford University Press.

Local government in South Africa is a distinctive sphere of government in terms of the Constitution. Political authority is devolved to local government and local councillors are elected democratically at the local level. In reality, however, the degree of contestability of local government elections is low because of the strength of the national ruling party. Apart from local elections, residents do not have the power to recall their local councillors or officials. These shortcomings translate into a range of political weaknesses, such as patronage and a lack of local accountability.

According to the literature on decentralisation, accountability is central to democratic governance.⁶³⁴ The literature on decentralisation contends that at a national level the most important aspects of accountability reside in the checks and balances between the judiciary, legislature and executive, as well as in the presence of independent specialized and oversight entities such as human rights commissions, electoral commissions, public service commissions, public protectors, auditors-generals, and anti-corruption bodies.⁶³⁵ In South Africa, such institutional systems are in place and are constitutionally guaranteed.

Theories on decentralisation support the need for devolving political authority to local government.⁶³⁶ The premise is that devolution brings government closer to the people, and thereby increases accountability. In South Africa, the principle of public participation is entrenched in legislation and policies pertaining to local government, and most municipalities have set up ward committees for this purpose.⁶³⁷ However, empirical evidence suggests widespread failure of these institutions for public participation. Some authors claim that

⁶³⁴ Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: John Hopkins University Press.

⁶³⁵ Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

⁶³⁶ Diamond, L. (1999). Developing Democracy: Towards Consolidation. Baltimore: John Hopkins University Press. And Grindle, M. (2007). Going Local. Princeton: Princeton University Press.

⁶³⁷ The White Paper on Local Government (1998). And the Municipal Systems Act. (Act 32 of 2000). And the Municipal Structures Act (Act 117 of 1998). And the Constitution of South Africa (Act 108 of 1996). And Schmidt, D. (2007). Report on the Good Governance Learning Network Workshop on the Local Government White Paper Review Process. Good Governance Learner Network.

ward committees are little more than political party forums.⁶³⁸ The policy framework in South Africa decentralises power from the centre to provinces, metropolitan, district and local municipalities and is aimed at promoting public participation in local decision-making. This intention has not been fully realised. At local government level, ordinary people usually have little say in budget formulation, and policy-making remains the prerogative of local government councillors.

Local political autonomy is limited by a number of factors, such as the strength of the ruling party (the ANC) in the national legislature. Based on the 2009 national elections, the ANC collected 65.9% of the vote with the major opposition party, the Democratic Alliance (DA), receiving only 16.6%. This translates into the ANC taking up 264 of the 400 parliamentary seats, the DA 67 parliamentary seats, with the remaining 71 seats shared among ten other political parties. The ANC has thus no serious party opposition. (See Appendix 3).

In addition to the dominance of the ruling party, the chapter on political decentralisation showed that the independence and separation of powers between the legislature, executive and judiciary is undermined by the system of proportional representation whereby Members of Parliament are elected through a party-list system, who in turn elect the President. The President appoints the national executive.⁶³⁹ The outcome is that the national executive represents the interests of the ruling party. The outcome of the party-list system is that Members of Parliament in reality do not represent any particular territorial constituency.

This study has also demonstrated that the annual budgeting process is predominantly a national executive exercise. Neither the national or provincial legislatures have any significant influence and the draft budget is only discussed in Parliament during the final stage of the annual budgeting process. Members of Parliament have no power to amend the budget, and may only approve or reject it. However, rejection would go against the will of the national executive, and by implication, party leadership. This executive dominance extends to municipal councils since political parties are predominantly organised along national lines.

⁶³⁸ Deacon, R. and Piper, L. (2008). *Party Politics, Elite Accountability and Public Participation: Ward Committee Politics in the Msunduzi Municipality*. In Transformation. Volume 66/67. Pp.61-82.

⁶³⁹ Suttner, R. (2006). *Party Dominance 'Theory': Of What Value?* In Politikon. Volume 33(3). Pp. 277–297.

This study has shown that the Constitution provides for the devolution of political authority to sub-national levels of government by instituting local elections and local appointment of municipal government officials. But devolution should mean that, once elected, local councillors are free and politically independent of other spheres of government. The chapter on political decentralisation has illustrated that local political autonomy is curtailed by factors such as central party dominance, the associated strength of the national executive system, as well as by the incompetence of ward councillors and lack of public participation.

Coupled with the limitations of local political independence is the hierarchical nature of the intergovernmental relations framework, which allows for minimal local government participation in national decision-making forums. This is evident by the SALGA delegation having only two representatives in the national legislature. Ruling party dominance extends across the provinces where currently only one province (the Western Cape) is not under ANC leadership. The implication for local government is that the respective provincial local government associations reflect the same leadership patterns. In essence, therefore, the policies that bind local governments such as those specifying the quantity and quality of service provision, and those setting local government service delivery tariff rates and ratios, are largely determined by national government.

In short, the devolution of political authority is firmly entrenched and protected in the legislative framework of South Africa; however, aspects such as one-party dominance, a lack of local accountability and public participation in local policy-making translate into substantial limits to local political autonomy. Under such conditions, political decentralisation is, in effect, a deconcentration of national party authority to the local sphere of government.

8.1.2 Administrative Decentralisation

Since 1994, local government in South Africa has steadily moved away from a racially segregated and discriminatory local government system towards one that is egalitarian and non-racial. The decentralisation of administrative powers and functions to local government in South Africa means that municipalities are no longer merely responsible for day-to-day services such as refuse removal, but are now designated as the primary authorities responsible for the provision of universal basic service delivery. The provision of municipal services are no longer restricted to the few and privileged.

Demarcation has successfully reorganised the geographical landscape of local government. It has amalgamated previously marginalised rural areas with urban areas. However, this has resulted in very large municipalities with vast underdeveloped land without an additional revenue base. Wall-to-wall municipalities have been established throughout South Africa, but considerable differences between and within the different categories of municipalities continue to exist. Each municipality is faced with unique demographics; population sizes; infrastructure and service delivery backlogs; poverty levels; as well as varying management capacity.

This study has explained that administrative decentralisation has been challenged by the complexity concerning the integration of formally separate administrative and financial systems, while municipalities have simultaneously been assigned extensive powers and functions for service delivery, which are compounded by rigorous and demanding local development planning processes and responsibilities. Local government transformation has had to take place in a rapidly changing political environment, which is characterised by a degree of political distrust between local councillors and local government officials. This distrust or tension between councillors and officials has been compounded by a shortage of skills and experience in managing the transformation processes of local government in general.

Metropolitan municipalities have been granted extensive independent administrative autonomy because of their economic strength and economic growth potential. The argument has always been that metropolitan municipalities should not be sources of cross-subsidization

for rural areas.⁶⁴⁰ This responsibility has fallen onto district and local municipalities. However, the technical and administrative capacities of these two municipal categories are uneven, with some (such as local municipalities) proving more capable than others (such as district municipalities).

These disparities are becoming more obvious as district and local municipalities continue to grapple with the remaining service delivery backlogs. The chapter on administrative decentralisation showed that the national government perceives that local municipalities have adequate capacity and access to revenue and hence has transferred surplus generating functions, such as water and electricity, to district municipalities in an attempt to strengthen the latter. The result is that the local autonomy of municipalities has been seriously diminished.

Table 8.2 presents the theoretical measures of administrative decentralisation and illustrates to what extent these are evident in South Africa.

Table 8.2 Measures of Administrative Decentralisation

Theoretical Measure	In Practice
Is administrative authority protected by a constitution?	Yes.
Do municipalities have autonomy to contract out own responsibilities?	Municipalities have limited autonomy, need provincial approval. There is currently a policy review underway proposing to centralise this authority.
Do local municipalities have administrative regulatory authority (to make by-laws)	Yes.
Do municipalities have adequate expertise and capacity?	No.
Do municipalities have autonomy to fire or hire municipal employees?	Yes.
Do municipalities have autonomy to set terms of employment of municipal employees?	There is currently a draft Public Services Bill which aims to standardise remuneration and service standards

⁶⁴⁰ Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

	across all spheres of government.
Do municipalities have autonomy over all municipal services?	No, autonomy over municipal services is shared with other spheres of government, and other tiers of local government
Do municipalities have autonomy for planning?	Yes, but within nationally determined parameters.
Do municipalities have autonomy for procurement?	Yes. However, in October of 2009 it was proposed that local procurement should become a centralised function.

Local councils have the authority to pass by-laws with respect to the implementation of their legally assigned functions and responsibilities as stipulated in Schedule 4B and 5B of the Constitution, without having to gain clearance from higher-level governments. While decentralised service provision is prescribed in Schedules 4 and 5, authority over such provision tends to remain central. Access and the allocation of resources to supply basic services also remain centrally controlled.

In legal terms, municipalities have autonomy over planning. However, this study has shown that planning depends on capacity. The national directive is to provide free basic services, and any local development planning must prioritise the eradication of service delivery backlogs. Authority over local service delivery functions is therefore largely determined by national government policy. The tendency is that rather than devolving administrative autonomy to local government, national government (and provincial governments) tends to delegate specific functions and responsibilities to local government. The result is that municipalities have become more accountable to national and provincial government than they are to their local constituents.

The devolution of the cost recovery function to municipalities is of particular interest. National government and financial institutions such the National Treasury and the FFC regard this as crucial for local autonomy. The argument advanced by national institutions is that unless municipalities become better at recovering costs, they will not become autonomous government entities. This is true; however, one of the key arguments of this study is that there are broader systemic factors at work. This study explored the complexities facing municipalities regarding the assignment of cost recovery as a fundamental local

administrative responsibility. The legislative framework devolves the responsibility for cost recovery to local government. But, as the chapter on cost recovery illustrated, municipalities also face a range of implementation problems, most of which are beyond their control, such as the widespread prevalence of indigence.

National legislation establishes the basis for the division of powers and functions across the spheres of government as well as pronouncing on matters of local governance. However, there is central administrative authority to modify or revoke powers, thus making municipalities susceptible to change. For example, the precise division of power and responsibilities between spheres of government as well as between tiers of local government is not embodied in any specific legislation, but is determined rather by administrative delegation. National government can with relative ease shift powers and functions across spheres of government. As highlighted throughout this thesis, such fluidity results in sectoral turf battles, in inconsistencies and in what municipalities commonly refer to as unfunded mandates. In this respect, administrative functions become delegated functions. This results in municipalities becoming the delivery agents of other spheres of government, which in turn diminish local governments' authority and autonomy over the implementation of their own administrative functions.

8.1.3 Fiscal Decentralisation

The Constitution prescribes that the designation of political and administrative powers and functions to sub-national levels of government must be accompanied by the transfer of adequate fiscal authority.⁶⁴¹ In legal terms, therefore, fiscal decentralisation implies that municipalities should have the necessary fiscal authority and powers to provide basic services and perform the functions allocated to them in terms of the Constitution.

The chapter on fiscal decentralisation demonstrated that South Africa's current system of fiscal decentralisation points to a steady increase in the centralisation of fiscal autonomy. Whether steps towards fiscal centralisation are appropriate depends on what the objectives of centralisation are. Bahl and Linn argue that if fiscal autonomy is highly devolved, central

⁶⁴¹ Section 214. 2 (d) of the Constitution of South Africa. (Act 108 of 1996).

government relinquishes control over its major fiscal instruments.⁶⁴² If so, it becomes difficult to increase revenue in order to reduce the national budget deficit; or to pass structural tax reforms; or to adjust levels of inflation that might be aimed at stimulating savings or reducing imports.⁶⁴³

South Africa's fiscal policy does ascribe to central fiscal control, which is geared towards maximising tax collection, equalization, as well as oversight and stimulation of local expenditures for particular activities such as the provision of basic services.⁶⁴⁴ It is about establishing macroeconomic stability, hence the justifiable emphasis on limiting municipal taxing and borrowing powers, and spending autonomy. The primary objective is to attain a degree of macro-economic stability, combined with socio-economic equalization, while at the same time ensuring the implementation of national policy mandates, such as the provision of free basic services by local governments.⁶⁴⁵ Defined as such, fiscal centralisation is in the interest of local fiscal autonomy as it is aimed at achieving fiscal equalisation.

A centralised system of intergovernmental fiscal transfers can be a step towards fiscal decentralisation in a context where financial resources and capacity vary according to region. However, the nature of such grants and the conditions attached thereto are indicative of the extent to which grants aim to increase local fiscal autonomy. Intergovernmental fiscal transfers are a compromise solution to the division of revenue-raising authority and expenditure responsibility. They permit national governments to retain the authority to tax productive resources bases, but guarantee state and local governments a flow of revenues.⁶⁴⁶

Based on the Constitution, local government has the authority to independently spend its Equitable Share allocation. However, the transfer of revenue from national to local government continues to have strong conditions attached, while spending is closely monitored. The chapter on fiscal decentralisation demonstrated that even the supposedly

⁶⁴² Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

⁶⁴³ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

⁶⁴⁴ See for example Growth Employment and Redistribution Strategy (GEAR) and Accelerated and Shared Growth Initiative for South Africa (Asgisa),

⁶⁴⁵ Bruggemans, C. (2003). A Change of Pace. Johannesburg: Wits University Press.

⁶⁴⁶ Bahl, R. and Linn, J.F. (1992). Urban Public Finance in Developing Countries. New York: Oxford University Press.

unconditional Equitable Share transfer has implicit conditionalities attached, since the amount allocated is primarily determined by the service delivery backlogs of municipalities as opposed to their overall operating expenditure. This study has shown that local fiscal autonomy is limited by the structure and conditions of the intergovernmental grant system.

Table 8.3 illustrates that, in reality, fiscal decentralisation in South Africa remains largely deconcentrated. It highlights some of the restrictions and limitations of local fiscal autonomy, such as the centralised framework for revenue collection and grant dispersal, as well as municipalities' reliance on intergovernmental grants due to a lack of own revenue. The collection of revenue is limited to cost recovery for the delivery of local public services, and property rate taxes. Local government does not have the authority to implement local taxes, while rates on property, electricity, water and sanitation are determined nationally.

Table 8.3: Measures of Fiscal Decentralisation

Theoretical Measure	In Practice
Is fiscal authority protected by a constitution?	Yes.
Do local municipalities have the authority to determine rates, and local taxes?	No.
Are the majority of transfers formula-based and unconditional?	Marginally more formula-based.
Are unconditional grants unrestricted?	No.
Are local municipalities accountable for expenditure?	Yes, but not to local constituents.
Is there alignment between local expenditure responsibilities and own revenue capacity?	No.
Are local municipalities reliant on intergovernmental transfers?	Yes.
Do local municipalities have autonomy in determining local budgets?	Yes.
Are salaries of local government employees determined by the local municipalities?	No.

Is there local government representation and participation in national budget-making processes?	Limited.
Do local municipalities have autonomous borrowing rights?	Limited to domestic market, only when financial creditworthy, and approved by central government.

This study explained that there are multiple reasons for the financial shortcomings of municipalities. For example: ill-planning by municipalities; improper or incompetent budgeting; weak financial management; as well as ineffective cost recovery strategies. However, it was found that *finance does not follow function*. Local governments continue to encounter unfunded mandates.⁶⁴⁷ National government has delegated extensive functions to local government without the necessary accompanying funds which are specific to the function in question.

The nature of intergovernmental fiscal relations is a crucial factor in striking the right balance or in resolving tensions between the different roles and functions of each sphere of government. If central government prescribes the terms on which fund and resources are released or transferred, then fiscal relations translate into increased central regulatory control. This minimises administrative decentralisation and limits political autonomy over fiscal decision-making.

As noted in this study, the administrative authority of national government to shift social expenditures to local governments has resulted in unfunded mandates. The critique is that functions are delegated to local government without providing additional finances. Intergovernmental fiscal transfers are the dominant source of revenue for local government. One of the major shortcomings of the current intergovernmental fiscal configuration is that it fails to align the expenditure responsibilities of local governments with its revenue-raising powers. Local expenditure controls are tight, and revenue powers are limited, while administrative powers and functions are extensively decentralised. This is evident in the cost

⁶⁴⁷ Interview with Municipal Councillor. (Msunduzi Municipality). Pietermaritzburg. 23 March 2009. And Atkinson, D. *Taking to the Streets*. In Buhlungu, S., Daniel, J., Southall, R. and Lutchmann, J. (Eds.). (2007). *State of the Nation: South Africa 2007*. Pretoria: Human Sciences Research Council Publishers.

recovery challenges of municipalities which increase municipal debt and lead to a growing reliance on intergovernmental fiscal grants.

The argument is not whether fiscal decentralisation is desirable or not. Its appropriateness is related to what extent it enables local municipalities to be financially autonomous and provide all South Africans with equitable and quality basic services. While the central government's tight fiscal regulations may foster macro-economic stability and address regional imbalances, there is uncertainty as to whether its central control supports or stifles local autonomy. The factor of uncertainty is whether the tight central controls are temporary and whether central government aims to devolve more fiscal autonomy to local government in the future.

The chapter on fiscal decentralisation demonstrated that the manner in which fiscal decentralisation has evolved in South Africa remains little more than a theoretical concept. Rather than devolved fiscal autonomy, it signifies a set of hierarchical intergovernmental fiscal relations. South Africa's system of fiscal decentralisation is characterized by centralised taxation and decentralised service delivery obligations. Local government discretion is minimal and translates into being little more than the power to prioritize among the abundance of national directives, while hoping that the functions delegated to local government will be accompanied by adequate financial resources.

Fiscal local autonomy is limited as long as unfunded mandates remain; as long as the delegation of responsibilities for expenditure continue without adequate funding; and as long as municipalities lack institutional and technical capacity.

8.2 Devolution, Delegation and Deconcentration

Examining the political shortcomings coupled with the administrative and financial limitations sheds light on some of the current problems facing local government in their provision of basic services. Determining whether the type of decentralisation is an appropriate form of governance depends in large part upon its objectives. Based on a reading of the various policy documents pertaining to local government in South Africa, the

objectives of decentralisation are to create democratic local governance, as well as ensuring universal access to basic services.⁶⁴⁸

The legislative framework for local government assumes the form of devolution, but in practice local autonomy is diminished by overriding national mandates, thereby rendering local government accountable to central government. This has created a system where municipalities' autonomy for delivering basic services has been minimised by a top-down system of central government oversight and control in order to ensure that the national services delivery mandate is addressed, as opposed to meeting the needs of local communities.

Table 8.4 constructs a summary of the key characteristics of the three different dimensions of decentralisation and the three different forms of decentralisation as discussed so far in this chapter. This illustrates the widespread variations in local government authority and autonomy with regard to local government authority for basic service delivery. (Table 2.1 in the chapter on political decentralisation presented a similar preliminary table summarising the various characteristics based on the literature on decentralisation). Table 8.4 shows that while in theory decentralisation is entrenched in the legal framework, in practice decentralisation is characterised by various forms of deconcentration and delegation, with minimal devolution. It indicates how the respective powers and functions are decentralised through delegation, deconcentration and/or devolution.

⁶⁴⁸ The White Paper on Local Government (1998). And the Municipal Systems Act. (Act 32 of 2000). The Municipal Structures Act (Act 117 of 1998). And the Constitution of South Africa (Act 108 of 1996). And the Intergovernmental Relations Framework Act. (Act 13 of 2005).

Table 8.4 Dimensions and Forms of Decentralisation in South Africa

DIMENSIONS OF DECENTRALISATION IN SOUTH AFRICA				
	Political	Administrative	Financial	
FORMS OF DECENTRALISATION	Deconcentration	Political parties organised along national lines.	Introduction of a Public Services Bill proposing that central government standardizes terms of employment and salaries	Minimal user fees and rates determined by central government
		No effective local input in national policymaking processes	Administrative appointments based on patronage	National budgeting process
		Legislature elected based on proportional representation through party-list system	Assignment of functions are central decisions	No taxing powers
		Ineffective mechanisms for public participation	Assignment of functions not based on subsidiarity	No authority to incur debt
		Local political parties represent national interests	–	No borrowing powers
	Delegation	Accountability to central government	Basic service provision, excluding social services	Minimal borrowing powers
		Head of local executive elected by local council (not by popular election)	Bureaucracies not insulated from systems of patronage	Majority of fiscal transfers are conditional
		Administration appointed by head of local executive (eg mayor)	Basic service delivery functions assigned to local municipalities on agency basis	Minimal taxing powers with rates determined by central government
		–	District municipalities delegate to local municipalities in a two-tiered system of local government	Chief Financial Officer appointed by Head of local executive (eg mayor)
	Devolution	Regular, competitive local government elections	Currently: authority to hire and fire and determining terms of employment and salaries, but moves towards centralisation	Proposal to centralise authority for procurement –
Accountability shared between political party and local constituents		Responsible for local economic development	Authority for cost recovery	
Authority for local policy-making		–	–	

Justifying certain centralist tendencies has been easy for national government. For example, government's contention that the severity of service delivery backlogs and the lack of municipal capacity necessitates greater central involvement to eradicate inequality; to ensure national quality standards for public services; to nurture national cohesion; and to coordinate cross-sectoral service delivery. In addition, this study has shown that the autonomy of municipalities is exacerbated by: poorly qualified personnel; weak institutional capacity; weak coordination among government institutions; conflicts between the tiers of local government; as well as a lack of accountability to local constituencies.

However, some signs point towards a central 'unwillingness' to devolve more autonomy to local government. According to the Constitution, central oversight and intervention in South Africa are supposed to be in the interests of supporting local government and capacity-building in order to promote the devolution of political, administrative and financial authority. However, this study has shown that it is doubtful whether the characteristics of deconcentration or delegation are in the interest of local autonomy, since oversight and intervention are at times motivated by other reasons, such as ensuring adherence to the national agenda.

The current tendency is to address local service delivery problems by increasing national government intervention as opposed to local empowerment. The chapter on fiscal decentralisation highlighted the decrease of the capacity-building grant from 7.7% of the total local government allocation in 2003/2004 to 1% in 2009/10.⁶⁴⁹ Local government weaknesses are addressed by imposing more regulations as opposed to capacity-building. For example, when the Auditor-General and National Treasury pointed out that municipalities lack financial management and budgeting capacity, or that they are often not able to identify costs and revenue streams from a particular service and are therefore unable to calculate the full cost of water provision and revenue potential, the national government's response was not to increase the focus on capacity-building but rather to implement tighter fiscal controls over tariff rates and accounting procedures.⁶⁵⁰

The consequence is that the insistence on uniform regulation effectively removes autonomy from those municipalities that are, indeed, capable of managing their own financial affairs.

⁶⁴⁹ The Division of Revenue Act. (Act 12 of 2009).

⁶⁵⁰ The Division of Revenue Act. (Act 2 of 2008).

The extent of deconcentration and delegation in all three dimensions of decentralisation indicates the expansion of central control at the expense of local autonomy. The decentralised system of governance currently in place sets up local government as service delivery agents for national and provincial governments, as opposed to autonomous entities.

The strength of the ruling national political party means that, in reality, local councillors regard themselves as being accountable first and foremost to the national government, in contrast to the local population that they serve. The conclusion reached here is that in some instances deconcentration or delegation is practised more as a matter of *controlling* local government, at the cost of local autonomy, as opposed to *assisting* local government. In other words, it appears to extend central control rather than empowering local government.

8.3 Unresolved Issues in Basic Service Delivery

Authors caution that decentralisation which entails wide-ranging institutional change takes time to mature.⁶⁵¹ In the South African case, the transformation of local government has been a lengthy process, and it is perhaps unrealistic to expect municipalities to have become autonomous entities. Local government reforms officially began in 1993 and final municipal jurisdictions were determined in 2000. A comprehensive local government policy framework has been in place since 2000. However, nine years have passed and a number of recent studies identify the same challenges facing local government that were first experienced prior to and during the demarcation period.⁶⁵²

At the end of 2009, the newly established national Department of Cooperative Governance and Traditional Affairs (COGTA) presented a working document on the state of local

⁶⁵¹ Shah, A. and Thompson, T. (2004) *Implementing Decentralised Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. World Bank Policy Research Working Paper 3353. Washington: World Bank. And Sharma, C.K. (2005). *When Does Decentralisation Deliver? The Dilemma of Design*. In South Asian Journal of Socio-Political Studies. Volume 6(1). Pp.38-45.

⁶⁵² Mirjam, V.D., Swilling, M., Pieterse, E. and Parnell, S. (Eds.). (2008). Consolidating Developmental Local Government: Lessons from the South African Experience. Cape Town: University of Cape Town Press. And Buhlungu, S., Daniel, J., Southall, R. and Lutchmann, J. (2007). State of the Nation: South Africa 2007. (2007). Pretoria: Human Sciences Research Council Publishers.

government in South Africa. This document identifies nine key challenges which are listed verbatim below:

- i. Huge service delivery and backlog challenges, e.g. housing, water and sanitation;
- ii. Poor communication and accountability relationships with communities;
- iii. Problems with the political administrative interface;
- iv. Corruption and fraud;
- v. Poor financial management, e.g. negative audit opinions;
- vi. Number of (violent) service delivery problems;
- vii. Weak civil society formations;
- viii. Intra- and inter-political party issues negatively affecting governance and delivery; and
- ix. Insufficient municipal capacity due to lack of scarce skills.⁶⁵³

This thesis has shown that most of these challenges have reference to the delivery of basic services and also have implications for local government autonomy. This chapter identifies two main additional issues which contribute to some of the service delivery challenges facing municipalities. The first issue centres around the lack of differentiation between the different categories of municipalities. The second issue pertains to the ongoing ambiguity with regard to the assignment of functions to local municipalities.

8.3.1 The Categorisation of Municipalities

The chapters on cost recovery and fiscal decentralisation demonstrated a standardized central government approach to local government support, oversight and funding. The criticism raised was that Category B municipalities, in particular, were treated uniformly as if they have equal capacity. These chapters concluded that there is a need for a more differentiated approach with regard to the division of revenue or borrowing powers, for example.

⁶⁵³ Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Page 4.

The very recent 2009 State of Local Government Report classifies the 283 municipalities into more than just the three categories but also into subcategories:

- **6 Category A municipalities:**

Metropolitan municipalities: with large urban complexes with populations over 1 million and accounting for 56% of all municipal expenditure in the country.

- **31 Category B1 local municipalities:**

Local municipalities: with large budgets and containing secondary cities.

- **37 Category B2 local municipalities:**

Local municipalities with a large town as a core.

- **31 Category B3 local municipalities:**

Local municipalities with small towns, with relatively small population and significant proportion of urban population but with no large town as a core.

- **32 Category B4 local municipalities:**

Local municipalities which are mainly rural with communal tenure and with, at most, one or two small towns in their areas.

- **25 Category C1 district municipalities:**

District municipalities which are not water service authorities.

- **21 Category C2 district municipalities:**

District municipalities which are water service authorities.⁶⁵⁴

This is a significant development and acknowledges that municipalities face different challenges. For example, this report recognizes that many urban and relatively more stable Category B local municipalities also face challenges of increased poverty due to rapid urbanization, a growing population and an increasing number of households, thus placing unsustainable pressure on existing service delivery infrastructure. Of the 131 Category B

⁶⁵⁴ Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Page 22.

municipalities, only 31 (or 24%) are identified as having a substantial rates base. This differentiation between municipalities may assist the National Treasury in implementing the [R] component (revenue-raising capacity correction) and [C] component (correction factor) of the Equitable Share formula which are currently not yet in effect. (This was discussed in the chapter on fiscal decentralisation.).

8.3.2 The Assignment of Functions to Local Municipalities

Compared to metropolitan and district municipalities, local municipalities are most affected by the ongoing uncertainty regarding the (re)assignment of basic service delivery functions. This is a crucial factor because it pertains to their core functions and revenue generating capacity and therefore ultimately shapes their political, administrative and financial autonomy. Three functional areas in particular warrant clarification and finalization: (i) the establishment of Regional Electricity Distributors (REDs); (ii) the housing accreditation system; and (iii) the establishment of a national water regulating authority.

i. Regional Electricity Distributors (REDs).

Beyond metropolitan municipalities, electricity distribution is mainly exercised by local municipalities. However, in 2005 Cabinet approved the establishment of seven Regional Electricity Distributors (REDs). One will be located in each metropolitan area, with one responsible for distribution in non-metropolitan areas.⁶⁵⁵

The rationale behind establishing REDs is that this would pool assets and supply areas, thus allowing scale economies to emerge, which would lead to more efficient and less expensive distribution. Each region would have its own tariff structure, as opposed to the current different tariff structures. In other words, the REDs would consolidate the delivery of electricity as opposed to authorising individual municipalities to deliver electricity. However, it would also mean a loss of revenue and possibly assets, too, for local municipalities which currently provide electricity.⁶⁵⁶

⁶⁵⁵ Whelan, P. (2004). A Review of Selected Local Government Revenue Reforms. IDASA: Budget Information Service.

⁶⁵⁶ Whelan, P. (2004). A Review of Selected Local Government Revenue Reforms. IDASA: Budget Information Service.

To date, it remains unclear what the final configuration will be of these distributors.⁶⁵⁷ The delay in finalising their implementation is resulting in the lack of infrastructure maintenance of the current electricity network because municipalities anticipate having to hand over existing electricity infrastructure to the respective REDs.⁶⁵⁸

As discussed in the chapter on cost recovery, the provision of electricity is a major source of municipal revenue. Another concern regarding REDs is that no assessment has been undertaken of their impact on municipalities' revenue flows, nor on how municipalities will be compensated for this loss of income.⁶⁵⁹ One outcome could be increased intergovernmental fiscal transfers, but as this thesis has argued, intergovernmental fiscal transfers minimise local fiscal autonomy.

The main concern is what effect REDs will have on local municipalities which currently provide electricity. The implication of introducing REDs would be that local municipalities operating in an electricity distribution region would have to transfer their assets and liabilities to the RED responsible for the distribution of the electricity in that region.

ii. Housing Accreditation

In 2005, the Department of Housing introduced an accreditation system especially designed to officially enable municipalities to perform certain housing functions. This was included in the Housing Development Agency Act (Act 23 of 2008). Yet to date little progress has been made.

The FFC indicated that since its introduction, 18 municipalities had applied for accreditation but no decisions have yet been taken.⁶⁶⁰ The significance of accreditation is that it would formalise the delegation of housing functions to local government. Housing is a concurrent function shared by national and provincial government. Housing projects tend to be

⁶⁵⁷ Financial and Fiscal Commission. Annual Submission for the Division of Revenue 2009/10.

⁶⁵⁸ SACities Network. (2007). State of Cities Finances Report.

⁶⁵⁹ Financial and Fiscal Commission. Annual Submission for the Division of Revenue 2009/10.

⁶⁶⁰ Financial and Fiscal Commission. Annual Submission for the Division of Revenue 2009/10.

undertaken in isolation from local government development planning. As a result, housing projects are poorly integrated into the overall municipal development objectives, with inadequate consideration being given to the capacity of local infrastructure.⁶⁶¹

According to the local government policy framework, municipalities are responsible for overall planning at the municipal level. This would include decisions on housing infrastructure, planning and development. However, the financial allocations to local governments are determined by the provincial sphere while planning for housing infrastructure is done at the municipal level.⁶⁶²

The objective of accrediting municipalities is that it would authorise them to administer national housing projects. This includes receiving, evaluating and approving applications for subsidies. An advantage for accredited municipalities is that they would receive their fiscal transfers directly from the national government rather than from the provincial sphere. At this point in time, provinces tend to act as a transferring agent between the national and local spheres, thereby adding a further layer to service delivery.⁶⁶³

The National Treasury described the accreditation principle as an example of subsidiarity because it devolves responsibility to the lowest possible level.⁶⁶⁴ Yet its failure to materialise gives credence to those (such as Heller) who adamantly argue that central government is hesitant to devolve meaningful autonomy to local government.⁶⁶⁵

⁶⁶¹ Financial and Fiscal Commission. Annual Submission for the Division of Revenue 2009/10.

⁶⁶² Financial and Fiscal Commission. Annual Submission for the Division of Revenue 2009/10.

⁶⁶³ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁶⁶⁴ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁶⁶⁵ Heller, P. (2001). *Moving the State: The Politics of Democratic Decentralisation in Kerala, South Africa, and Porto Alegre.* In Politics & Society. Volume 29(1). Pp. 131-163.

iii Regional Water Distributors

In addition to the unresolved arrangements regarding REDs and housing accreditation, there is now also talk about establishing regional water distributors. The 2009 Division of Revenue Act (Act 12 of 2009) suggests that regional water distributors might be established, based on the same principles of REDs. The Financial and Fiscal Commission has recently proposed that government establish an independent National Water Regulator that would report to Parliament.⁶⁶⁶ Its proposed functions, as the name suggests, appear to aim at overall control, leaving little room for local discretion. The proposed Water Regulator would standardise the entire water supply industry. This includes:

*Issuing licences; regulating tariffs; monitoring water integrated resource plans for infrastructure investments; regulating compliance to industry norms and standard; regulating the supply of water and sanitation services and their compliance to quality standards; regulating water efficiency and demand-side management; developing regulatory frameworks for PPPs and alternative service delivery models in the water sector; ensuring regulatory instruments support the achievement of universal access to water and sanitation services; and monitoring supply and demand trends in the water supply industry.*⁶⁶⁷

If this is the case, then water would cease to be one of the key sources of surplus revenue for municipalities and would further diminish local avenues for cost recovery.

These various ongoing and unresolved issues in basic service delivery suggest areas for further research in order to analyse their impact on local government autonomy.

⁶⁶⁶ Financial and Fiscal Commission. Annual Submission for the Division of Revenue 2009/10.

⁶⁶⁷ Financial and Fiscal Commission. Annual Submission for the Division of Revenue 2009/10.

8.4 Areas for Further Research

During the course of this study, a number of issues and concerns came to the fore warranting far more critical analysis. Five areas for further research are considered here: (i) the suitability of the two-tiered local government system; (ii) the sustainability of basic service delivery; (iii) redressing outdated and inconsistent data; (iv) the significance of public participation; and (v) the prospects for local economic development.

8.4.1 The Two-Tiered System of Local Government.

It remains to be determined whether the two-tiered system of local government is in the best interest of both Category B and Category C municipalities. This study has shown that it is a misconception that traditional urban municipalities are able to cross-subsidize the provision of basic services in underdeveloped, poor and remote areas. As such, their ability to further sustainable development in these areas is doubted.

Whether or not the two-tiered system of local government is constructive and in the interest of sustainable basic service delivery merits further investigation. Administrative decentralisation in South Africa has entailed the transfer of basic service delivery functions and responsibilities to local government. However, based on Section 156(4) of the Constitution, a municipality is entitled to the assignment of the administration of a function *if* it can most effectively be administered locally and if a municipality has the capacity to do so.⁶⁶⁸ It also states that powers *must* go to or *stay* at the local level *unless* they are better performed at a higher level.⁶⁶⁹ It is not clear here whether ‘the local level’ refers to local municipalities or to district municipalities.

The chapter on administrative decentralisation demonstrated how the Municipal Structures Amendment Act (2000) transferred the authority over basic service delivery from local municipalities to district municipalities. However, after the promulgation of the Municipal Structures Amendment Act, the Department of Provincial and Local Government issued a

⁶⁶⁸ Section 156(4) of the Constitution of South Africa. (Act 108 of 1996).

⁶⁶⁹ Carpenter, G. (1999) *Cooperative Government, Devolution of Powers and Subsidiarity: the South African perspective*. In Seminar Report: Subnational Constitutional Governance. Johannesburg: Konrad Adenauer Stiftung. Pp. 45-53.

general notice in which it reiterated the constitutional expectation that in order to promote local accountability, the powers and functions of basic services should be *as close as possible to the communities the services are meant to serve*.⁶⁷⁰ Such statements illustrate that government itself is unsure of where authority is or should be located.

It is worth considering whether districts should be abolished altogether. This study has indicated that many districts lack the capacity to fulfil their basic functions. It is generally accepted that district municipalities in South Africa experience problems of incompetence.⁶⁷¹ District municipalities are regarded as the weakest sphere of government, with the least capacity.⁶⁷² They are seen as lacking expertise and management skills. Few district municipalities have received ‘a clean bill of health’ by the Auditor-General.⁶⁷³ Their lack of financial capacity compromises the financial viability and capacity of local municipalities within their jurisdiction.

Steytler *et al* argue that the creation of a second tier of local government has been costly in unnecessarily replicating administrative structures and staffing. For example, the Alfred Nzo District Municipality in the Eastern Cape consists of only two local municipalities, and spends most of its resources in the one municipality where 95% of the district’s population resides.⁶⁷⁴

In South Africa there are 47 district municipalities and 231 local municipalities. According to the Department of Cooperative Governance and Traditional Affairs, as well as the Demarcation Board, more than 50% of district municipalities are not performing the core functions of delivering water, sanitation and electricity as stipulated in the Municipal Structures Amendment Act (2000).⁶⁷⁵ Table 8.5 illustrates the extent to which local

⁶⁷⁰ Department of Provincial and Local Government. General Notice 2592. 12 July 2000. Government Gazette 21370.

⁶⁷¹ Steytler, N. Baatjies, R. And Fessha, Y. (2007). *Where to Now with District Municipalities?* In Local Government Bulletin Volume 9 (3). Pp.7-8.

⁶⁷² Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

⁶⁷³ Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Working Document.

⁶⁷⁴ Steytler, N. Baatjies, R. and Fessha, Y. (2007). *Where to Now with District Municipalities?* In Local Government Bulletin. Volume 9 (3). Pp.7-8.

⁶⁷⁵ Department of Cooperative Governance and Traditional Affairs. (2009). And the State of Local Government in South Africa. Working Document. And Municipal Demarcation

municipalities are assuming district municipal functions. If one scrutinizes the table below more closely, on average almost 70% of the core basic municipal service functions are provided by local municipalities.

Table 8.5 Number of District Functions Performed by Local Municipalities

Function	Number of Local Municipalities	Percentage
Municipal roads	189	81%
Refuse removal	189	81%
Cemeteries	183	79%
Water (potable)	165	71%
Electricity reticulation	160	69%
Storm water drainage	159	68%
Sanitation	158	68%
Traffic and parking	149	64%
Fire fighting	130	56%
Municipal planning	123	53%
Municipal health services	106	46%

Source: Adapted from Municipal Demarcation Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

The Municipal Demarcation Board claimed in its 2006/07 Capacity Assessment Report that more and more functions in terms of Section 84(1) of the Municipal Structures Act had been shifted to local municipalities.⁶⁷⁶ There are also numerous examples of provincial intervention in district municipalities. In fact, provincial government intervention is going

Board. (2005). Review of the Adjustment of District Municipality Functions to Local Municipalities.

⁶⁷⁶ Municipal Demarcation Board. (2007). Capacity Assessment Report for 2006/07.

beyond district municipalities to local municipalities as the district municipalities have no capacity to monitor local municipalities, or to intervene where necessary. The Provincial Executive Council (PEC) of KwaZulu-Natal, for example, has taken over the administration of the Amajuba District Municipality as well as the Umzinyathi District Municipality. These municipalities have failed to compile budgets, and the Auditor-General disclaimed their municipal reports. They also experienced several financial constraints as well as a severe shortage of qualified staff.⁶⁷⁷ In addition, the administrations of the Newcastle, Kokstad, Impendle, Emandlangeni and Abaqulusi local municipalities were taken over by the province since their district municipalities did not have the capacity to administer the affairs of these local municipalities.

The two-tiered system of local government has created district municipalities as a tier of government that regards itself as the ‘watchdog’ of Category B municipalities, and yet is not accountable to the local municipalities within its respective area of jurisdiction. The hierarchical nature of the two-tiered local government system diminishes the authority of local municipalities, whereas in most cases the local municipalities are self-sufficient and can be trusted to operate independently of the district. Further investigation into the suitability of the current two-tiered system of local government and whether it is practical and conducive to the provision of sustainable basic services would be valuable.

8.4.2 Inconsistent and Outdated Data

One of the key challenges faced throughout this study was verifying and consolidating data. Census 1996 and Census 2001 are regarded as the only all-inclusive censuses which were conducted by Statistics South Africa (Stats SA). These surveys provide information on demographics and access to basic services by households. The next Census was due to take place in 2006, but the Cabinet postponed this until 2011.⁶⁷⁸

In 2007 StatsSA compiled a Community Survey which provided statistics on similar categories of information in the two censuses. However, arguments have been made that the

⁶⁷⁷ Department of Local Government and Traditional Affairs, KwaZulu-Natal. (2008). Provincial Interventions: Report to the Select Committee on Local Government.

⁶⁷⁸ Yu, D. (2009). The Comparability of Census 1996, Census 2001 and Community Survey 2007. Stellenbosch Economic Working Papers: 21/09. The Department of Economics and The Bureau For Economic Research. The University of Stellenbosch.

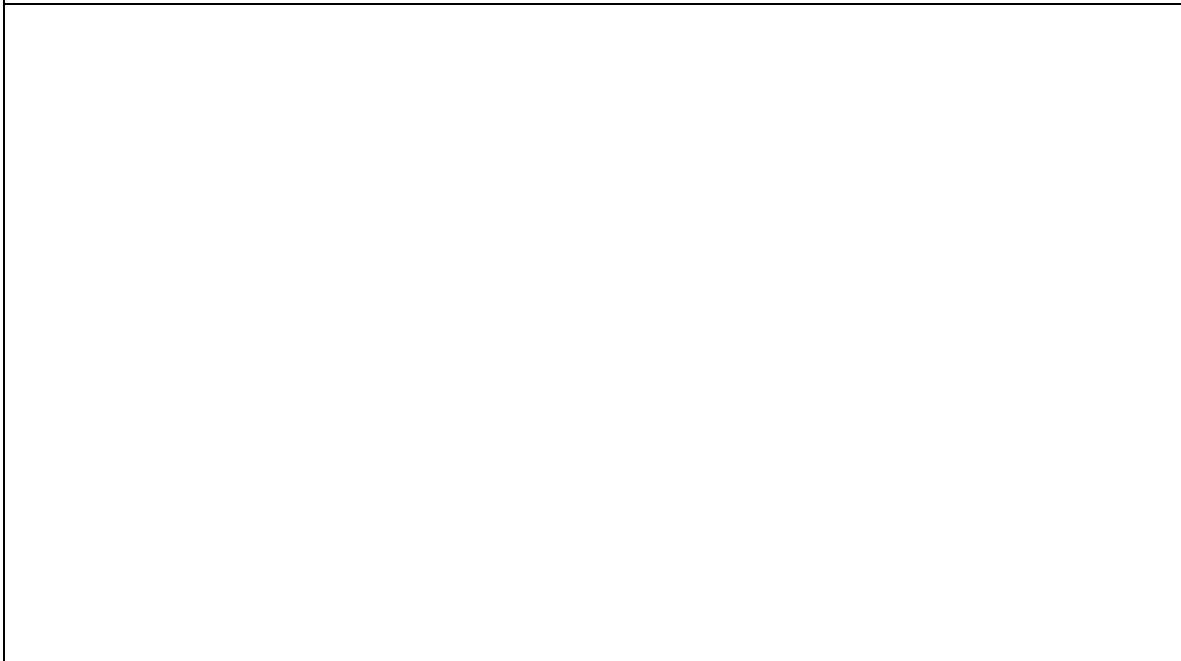
data presented in the 2007 Community Survey is unreliable and that the sample size was too limited.⁶⁷⁹ At this point in time, some government departments use 2001 Census data, whereas others use 2007 Community Survey data.

The Department of Cooperative Governance and Traditional Affairs has based its 2009 State of Local Government Report largely on the 2007 Community Survey. However, the Department of Water and Environmental Affairs (DWEA) and the Department of Energy (DE) currently use 2001 Census data as a base, and update their data sets annually based on figures supplied by the municipalities. In this latter case, the reliability of current data on access to water, sanitation, electricity and the backlogs per household depend primarily on the quality of data that municipalities collect and submit to various government departments. This has obvious implications for the reliability of data which are used currently by DWEA and DE.

Given that the datasets are variable and inconsistent, the best one can do is to identify trends. However, even interpreting data based on trends alone can result in drawing inconclusive or inaccurate interpretations. For example, Figure 8.1 was presented in the 2009 State of Local Government in South Africa Report. According to this figure, access to basic sanitation has *decreased* in three provinces: the Free State, Gauteng and the Northern Cape. Even more pronounced is Figure 8.2 which indicates that access to electricity has *decreased in every single province* in South Africa. This indicates either a vast discrepancy in datasets, or if the data are reliable this indicates a substantial decline in access to basic services. The latter has serious implications and would point to the increasing inability of households to afford basic service delivery fees and hence suggests that they are being denied access to basic sanitation and electricity.

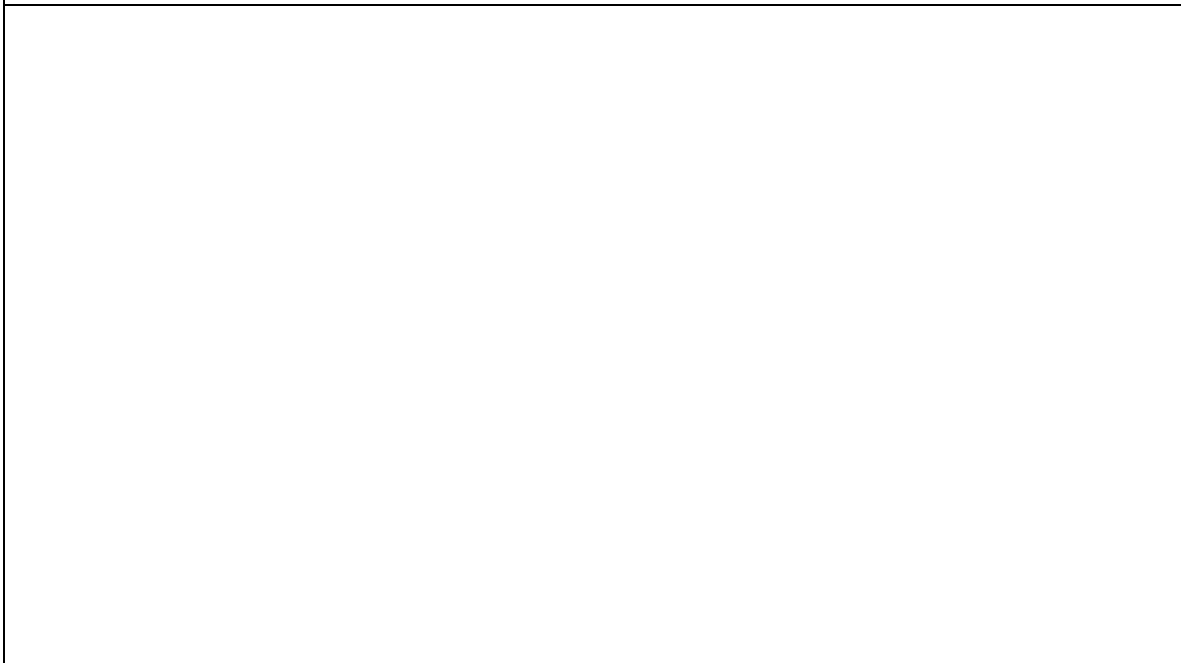
⁶⁷⁹ <http://www.polity.org.za/article/community-survey-2007>.

Figure 8.1 Number of Households without Access to Basic Sanitation



Source: Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa

Figure 8.2 Number of Households without Access to Basic Electricity



Source: Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa

A lack of access to verifiable data has been a problem since the inception of the present dispensation of local government. The Ministerial Advisory Committee on Local Government and Transformation indicated in its 2001 Report that the newly amalgamated municipalities had no reliable data on households, income, poverty levels, service delivery levels or on outstanding backlogs.⁶⁸⁰ A municipal official noted that Census information was not entirely reliable due to, for example, constantly changing migration patterns and a high number of informal settlements. This is not a matter of financial or administrative mismanagement, but a real consequence of the comprehensive political reorganisation of local government country-wide. Problems which, he argues, persist today.⁶⁸¹

The chapter on cost recovery explained that municipalities experience great difficulties in determining indigence, access to services and illegal connections. Many municipalities lack appropriate technology and accurate databases to receive, process and store information on service delivery.⁶⁸² This has complicated billing, metering and the overall revenue administration systems, and there appears to be ‘a lack of a workable automation of processes and integration of databases onto the mainframe.’⁶⁸³

SALGA pointed out that many municipalities continue to encounter difficulties in compiling and/or updating their indigence registers.⁶⁸⁴ Some of this was ascribed to municipalities’ inability to determine the socio-economic status of communities. The lack of local demographic data not only makes it difficult for municipalities to plan and provide basic services, but this is also true for national government departments, like the National Treasury, which is responsible for determining the division of revenue. The Financial and Fiscal Commission argues that in order to accurately determine resource allocation, it is necessary to measure the extent to which municipalities are able to raise their own revenue.⁶⁸⁵ The chapter on fiscal decentralisation highlighted current inability of the National Treasury to

⁶⁸⁰ Interview Municipal Official (Msunduzi Municipality). Pietermaritzburg. 23 March 2009.

⁶⁸¹ Interview Municipal Official (Msunduzi Municipality). Pietermaritzburg. 23 March 2009.

⁶⁸² SACities Network. (2007). State of Cities Finances Report.

⁶⁸³ SACities Network. (2007). State of Cities Finances Report. Page 52.

⁶⁸⁴ SALGA. (2009). Comments on the FFC Recommendation on the Challenges Facing Local Government.

⁶⁸⁵ Financial and Fiscal Commission. (2009). Annual Submission for the Division of Revenue 2009/10.

measure or determine municipalities' revenue capacity and hence its inability to apply the [C] and [R] components of the Equitable Share formula.⁶⁸⁶

In short, access to reliable and verifiable data is fundamental in all respects: for municipalities; for government departments; as well as for the National Treasury.

8.4.3 The Sustainability of Basic Service Delivery

During the course of this study, it became apparent that there is a fundamental lack of assessment or consideration of the potential implications of national policy decisions for local government. There are numerous aspects that warrant further investigation and critical analysis. The general opinion currently is that municipalities are financially in a precarious position, which is likely to worsen. This makes it essential for more concerted research into the impact of free basic services and non-payment for services on the sustainability of basic service delivery.

Numerous government reports claim that since 1994 substantial progress has been made with respect to basic service delivery. According to the National Treasury, the number of people with access to potable water increased from 59% to 86%. Electricity access increased from 36% to 79%, while sanitation increased by 25% to 73%. The number of people using the bucket system in 2006 was estimated at 67,000 compared to 250,000 in 1994.⁶⁸⁷ This thesis illustrated, however, that at the same time municipal debt has steadily grown to about to R44.2billion.⁶⁸⁸

One hypothesis worth exploring is whether eradicating the remaining backlogs means that more households will gain access to service infrastructure, which would increase the number of households which would be entitled to free basic services. This would raise infrastructure and service delivery costs but would probably not increase revenue potential. If this is the

⁶⁸⁶ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10. This document provides the latest figures on the rollout of basic services.

⁶⁸⁷ National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10.

⁶⁸⁸ This is the latest official figure available. (National Treasury. (2008). Local Government Budgets and Expenditure Review 2003/04-2009/10).

case, then municipal consumer debt may very well increase, making basic service delivery unsustainable.

The Auditor-General and National Treasury are of the opinion that municipalities have not demonstrated significant improvements in collecting all revenue due, or in increasing their revenue potential from current sources. However, the extent to which households are able to afford to pay for basic services has not been determined, nor has consideration been given as to how this inability to pay will affect the long-term sustainability of service delivery investments.

No official assessments seem to have been undertaken to ascertain the ability of households to afford basic service delivery. There are ongoing complaints of frequent interruptions in the water supply owing to vandalism and burst pipes. In addition, reports abound of people resorting to illegal connections.⁶⁸⁹ However, it is unknown to what extent water and electricity ‘theft’ are due to non-payment or whether it is a question of affordability. Nor is there any quest to determine how the inability to pay will affect the long-term sustainability of service delivery investments. If illegal connections abound because of a lack of affordability, then service delivery will not be sustainable. The chapter on cost recovery presented the argument that a willingness to pay and the affordability of user fees are prerequisites to investing in basic service delivery infrastructure. Providing basic services to those who are unable or unwilling to pay will result in infrastructure being underutilised and falling into disrepair at huge cost to the public sector.

There has also been no estimation of the real costs associated with free basic services. Free basic services are largely financed through cross-subsidization from the rich to the poor. The implications of cross-subsidization on a municipality’s overall service standards have not yet been ascertained. Van der Berg notes that attempts at measuring the fiscal impact of free basic services depends on the availability of relatively good micro-data at the household level, which he argues is currently non-existent.⁶⁹⁰

⁶⁸⁹ National Electricity Regulator of South Africa. (2007). Full Audit Report: August 2007. And Stanton, A. (2007). Msunduzi Municipality Customer Satisfaction Survey. Report presented to the Msunduzi Municipality. And Stanton, A. (2006) and (2009). Survey on Access to Basic in the Msunduzi Municipality. Unpublished Reports.

⁶⁹⁰ Van Der Berg, S. (2009). Fiscal Incidence of Social Spending in South Africa. Report presented to the National Treasury.

It remains to be proven that the health and social benefits associated with access to free basic services outweigh the financial costs of municipal service delivery.⁶⁹¹ There is a need to test the assumption that access to free basic services improves peoples' living conditions to such an extent that they will become economically active, which in turn will result in people being able to afford user fees.

There has been no official assessment thus far into the viability and sustainability of providing basic services. The lack of reliable and up-to-date data makes it impossible to consider whether basic service delivery will be sustainable. An assumption is often made that access to basic services will lead to development, which in turn will lead to users being able to afford paying fees for them.⁶⁹² There is no evidence to suggest that government is able to afford *and* maintain the delivery of basic services.

There has also been no assessment of the reliability and quality of municipal services. While impressive basic service delivery rollouts have taken place, some question the quality, cost-effectiveness and sustainability of services. Hemson, for example, claims that almost two-thirds of the water projects put in place since 1994 have fallen into disuse.⁶⁹³ According to Hemson, many water delivery programmes to poor households are unsustainable because of low household consumption levels which have resulted in insufficient income levels for municipalities.⁶⁹⁴

Reports abound on the poor quality of RDP housing.⁶⁹⁵ Some housing projects are far removed from the city centre, making service delivery expensive. Other housing developments are furthering pressure on existing infrastructure such as sanitation and

⁶⁹¹ Ridde, V. (2003). *Fees-For-Services, Cost Recovery, and Equity in a District of Burkina Faso Operating The Bamako Initiative*. In Bulletin of the World Health Organization. Volume 81(7). Pp. 532-538.

⁶⁹² World Bank. (2004). World Development Report 2004: Making Services Work for Poor People. Washington: World Bank.

⁶⁹³ Hemson, D. (1999). *Beyond BOTT? Policy Perspectives in Water Delivery*. Report on The NGOs and the BOTT Programme in the Eastern Cape and KwaZulu-Natal. Durban: Health Systems Trust.

⁶⁹⁴ Hemson, D. (2004). 5th Economic and Social Rights Report Series 2002/2003 Financial Year. Report presented to the South African Human Rights Commission.

⁶⁹⁵ Ndaba, D. (2009). *Minister Sexwale Maps Out A 'Beyond Housing' Vision*. 24 July 2009. (Available at <http://www.engineeringnews.co.za>).

sewerage which are not capable of handling increased service delivery.⁶⁹⁶ The Local Government Budgets and Expenditure Review 2003/04 – 2009/10 highlighted the backlogs in serious repairs and maintenance and renewal that exist in relation to municipal infrastructure, particularly pertaining to electricity, water reticulation, sewage and storm water and road systems. The Minister of Human Settlements, Tokyo Sexwale reported in November 2009 that “it would cost R1,3 billion to rebuild badly constructed houses provided under the government’s housing programme.”⁶⁹⁷

Since 1995, Eskom has provided universal basic service infrastructure as opposed to connecting only those households which applied and paid for connections. As such, access to electricity did not discriminate against the poor. The assumption was that the consumption of poor households, through tariff subsidies, would generate adequate income to recover the costs of electrification. However, the average consumption was low and revenue fell short of the total operating costs.⁶⁹⁸ (Then) President Mbeki announced in the 2004 State of the Nation Address that by 2012, all households would have access to electricity. According to Bekker *et al*, by 2008 an estimated 6.9 million households still needed to be electrified. This means approximately 1.15 million connections per year. This figure is almost double that estimated by the Department of Minerals and Energy’s 2007 Universal Access Plan, which will cost between R5 billion to R6 billion a year. Yet the Integrated National Electricity Programme (INEP) grant for 2007/2008 was only R1.4 billion.⁶⁹⁹

In short, there are many separate yet interrelated issues which impact on the sustainability of basic service delivery. Further investigation into the sustainability of basic service delivery, especially those of free basic services, is necessary bearing in mind the remaining backlogs; issues of non-payment, affordability and indigence; quality; and the maintenance of service delivery infrastructure.

⁶⁹⁶ SACities Network. (2007). State of Cities Finances Report.

⁶⁹⁷ SAPA. *R1,3 bln to fix shoddy houses*. In The Witness. 17 November 2009.

⁶⁹⁸ Bekker, B., Eberhard, A., Gaunt, T. and Marquard, A. (2008). *South Africa’s Rapid Electrification Programme: Policy, Institutional Planning, Financing and Technical Innovations*. In Energy Policy. Volume 36. Pp. 3115-3127.

⁶⁹⁹ Bekker, B., Eberhard, A., Gaunt, T. and Marquard, A. (2008). *South Africa’s Rapid Electrification Programme: Policy, Institutional Planning, Financing and Technical Innovations*. In Energy Policy. Volume 36. Pp. 3115-3127.

8.4.4 Public Participation

The chapter on political decentralisation has demonstrated that a comprehensive legislative framework has been set up to enable community participation. The national Department of Provincial and Local Government contends that:

*[L]ocal government must be committed to work with citizens and groups within the community to find ways to meet their social, economic and material needs and improve the quality of their lives.*⁷⁰⁰

However, reports increasingly cite examples of communities protesting against inadequate service delivery.⁷⁰¹ In 2009, newspaper articles reported on the escalation of country-wide protests.⁷⁰² The severity and recurring nature of protests has resulted in the Public Protector investigating the underlying causes.⁷⁰³ Factors identified were community dissatisfaction with poor service delivery. Common complaints identified were financial mismanagement and allegations of fraud and corruption coupled with complaints of poor communication with communities.

According to the Public Protector, perceptions of corruption and maladministration have led to public discontent and a lack of confidence in the government's ability to deliver.⁷⁰⁴ The Public Service Commission set up the National Anti-Corruption Forum (NACF) in March 2007 and has since its inception received a total of 4726 cases. Of these, 2689 (57%) relate to corruption (bribery, embezzlement, fraud, favouritism and nepotism, conflicts of interest,

⁷⁰⁰Department of Provincial and Local Government. (Undated). Municipal Integrated Development Planning.

⁷⁰¹Department of Cooperative Governance and Traditional Affairs. (2009). State of Local Government in South Africa. Working Document.

⁷⁰²Brooks, C. *South Africa Hit By Service-Delivery Protests*. In Mail and Guardian. 22 July 2009. And Grobler, F. *Service-Delivery Protests a 'Warning Sign' For Government*. In Mail and Guardian. 20 July 2009. And Langer, M. *Government Probes Causes of Service delivery Protests*. In Mail and Guardian. 24 July 2009.

⁷⁰³Editorial. *Public Protector to Probe Service-Delivery Protests*. In Mail and Guardian. 16 August 2007. And Langer, M. *Government Probes Causes of Service delivery Protests*. In Mail and Guardian. 24 July 2009.

⁷⁰⁴Public Protector. Annual Report 2007/08.

maladministration and abuse of government equipment) and 1199 (25%) cases relate to complaints about a lack of service delivery.⁷⁰⁵

The escalation of service delivery protests occurring across South Africa conveys a general attitude of dissatisfaction with local government.⁷⁰⁶ The underlying causes warrant further investigation and it would be worthwhile to explore to what extent the escalating protests are informed by citizens expressing their dissatisfaction with local government's poor participatory practices.

Further research into the significance of participation may also test the extent to which fuller or better participation can result in enhancing the accountability of local government. The literature on decentralisation states that public participation informs local leaders about local needs and preferences. Of interest would be examining the extent to which public participation can force or influence local governments to explain or justify what they have done or failed to do.

According to the literature on decentralisation, the advantage of decentralisation is that "getting government closer to the people will lead to more participation in government".⁷⁰⁷ The assumption is that this will provide "an outcome that is closest to the preferences of the median voter, and will allow the political process to guarantee a more efficient operation of local government."⁷⁰⁸ As a result, local government would become more accountable to voters for the quality of services they provide, which in turn would persuade local populations to pay for public services.

The chapter on political decentralisation revealed that there is no evidence that voter preferences are translated into budget outcomes. Nor is there any evidence that this has improved a willingness to pay for local services. On the contrary, there is increased public

⁷⁰⁵ Public Service Commission. *Annual Report 2007/08*.

⁷⁰⁶ Brooks, C. *South Africa Hit By Service-Delivery Protests*. In *Mail and Guardian*. 22 July 2009. And Tau, P and Maphumulo, S. *More Service Protests on the Cards in The Star*. 24 July 2008. And Grobler, F. *Service-Delivery Protests a 'Warning Sign' For Government*. In *Mail and Guardian*. 20 July 2009.

⁷⁰⁷ Bahl, R. (1992). *Urban Public Finance in Developing Countries*. Oxford: Oxford University Press.

⁷⁰⁸ Bahl, R. (1992). *Urban Public Finance in Developing Countries*. Oxford: Oxford University Press.

unrest over inferior service delivery. The question emerges: just how responsive is South Africa's system of local government?

This shortcoming may yield an opportunity for further research into the relationship between local electoral power and local accountability for service delivery.

8.4.5 The Prospects for Local Economic Development

My particular study did not consider local government's responsibility for local economic development (LED). This is a complex and largely unfulfilled local government obligation, facing multi-faceted implementation problems which are beyond the aims of this thesis. Nevertheless, it is a vital focus area, worthy of critically analysis and substantial investigation.

LED is undoubtedly an important component of local government and is integral to the ability of municipalities to become autonomous entities. But the prospects for LED are not promising in a context where basic service delivery backlogs remain. The limited autonomy of local government as described in this thesis poses a significant hindrance to municipalities being capable of independently pursuing local economic development opportunities.

The same political, administrative and financial shortcomings facing municipalities regarding their ability to provide basic services will challenge municipalities in their endeavours for local economic development. While they have powers to formulate local economic development plans, they do not have the control over, or access to, resources necessary to implement plans.

The principle of local economic development is integral to the transfer of authority to local government. The White Paper on Local Government (1998) envisaged that local government would facilitate local economic development by mobilizing both people and local resources. The chapter on political decentralisation demonstrated that ward committees are the primary avenue for public participation at local government level but they remain predominantly ineffective.

An area for further investigation is the relationship between access to basic services and local economic development. A common argument is that the role of local government is to alleviate poverty through the use of LEDs. This will

*eradicate poverty by generating more jobs, free up fiscal resources for poverty reduction programmes and reduce the risk of financial crisis within local authorities.*⁷⁰⁹

To date, there is no data on the impact of the provision of free basic municipal services on either human development or on economic development. The World Health Organization and UNICEF argue that the health and social benefits associated with access to basic services outweigh the immediate and largely irrecoverable financial costs of public service delivery.⁷¹⁰ It is argued that as long as people have no access to basic services, there can be no income generation, poverty alleviation or local economic development. The assumption is that access to basic services will improve peoples' living conditions, making them economically active which, in turn, will lead to economic development, resulting in users being able to afford user fees, and therefore in government being able to recover costs. However, this is a questionable, if not oversimplified, assumption. It ignores the importance of having basic service infrastructure in place. It is doubtful whether local economic development can take place when there is a lack of access to service infrastructure. This thesis argues that the severity of remaining service delivery backlogs places pressure on economic infrastructure. Poor access and connectivity is widespread making the provision of basic services difficult. Under such circumstances, it is difficult to attract investment.

Service delivery backlogs continue to be a fundamental challenge for municipalities. The majority of national revenue transfers to local government is earmarked for service delivery, leaving municipalities with limited financial discretion to pursue independent local economic development. Such fiscal restraints limit local government development planning, and explain why municipalities' IDPs are more a list of basic service delivery needs as opposed to proposals for local economic development.

⁷⁰⁹ Kroukamp, H. (2006). *Local Economic Development: Contributor Towards Poverty Alleviation*. In Journal for New Generation Sciences. Volume 4(2). Pp. 22-33.

⁷¹⁰ Ridde, V. (2003). *Fees-For-Services, Cost Recovery, and Equity in a District of Burkina Faso Operating The Bamako Initiative*. In Bulletin of the World Health Organization. Volume 81(7). Pp. 532-538.

According to the legislative framework, local governments should become the drivers for local economic development so that they become less *dependent* on national government. However, LED requires local skills to direct economic investment. Despite these limitations, local governments have been assigned the responsibility for local economic development. One of the central tenets of this thesis is that the pursuit of local economic development is too ambitious as long as municipalities are incapable of providing sustainable basic services. Many local economic development projects have failed or are unsustainable because cash-strapped municipalities do not have the resources to maintain such projects.⁷¹¹ Projects require municipalities to provide service delivery infrastructure, and when such projects fail, municipal infrastructure often becomes redundant.

This chapter has identified and discussed a number of unresolved governance issues: the argument is that these contribute to the basic service delivery problems of municipalities. It is proposed here that it is unrealistic to expect municipalities to be the drivers of economic development as long as municipalities are confronted by the basic service delivery challenges as well as by the broader governance problems discussed throughout this thesis.

⁷¹¹ Rogerson, C. (2009). Strategic Review of Local Economic Development in South Africa. Final Report Submitted to the Department of Provincial and Local Government.

8.5 Closing Comments

This thesis has shown that local government is far from being a capable and autonomous sphere of government. A number of underlying factors were identified by exploring the political, administrative and financial dimensions of decentralisation. What has been illustrated is that municipalities in South Africa face widespread capacity shortages. The majority are in a financially precarious situation, faced with limited, underutilised and diminishing revenue potential. It is undeniable that expertise is lacking; cost recovery is insufficient; and that financial management remains inadequate.

This study has also demonstrated that one of the significant challenges of basic service delivery remains establishing an appropriate working relationship between the three spheres of government. This should be a relationship based on cooperative governance where each sphere is treated with respect and regarded as an autonomous entity and where the local sphere is not regarded as subservient to either the provincial or national sphere of government.

Development planning must be aligned across the three spheres of government. This has brought to the fore the dual challenge of increasing local government autonomy while maintaining central control. The pursuit of decentralisation in South Africa requires balancing the transfer of powers and functions with the need to coordinate service delivery across all spheres of government, while establishing appropriate structures and avenues for cooperative intergovernmental relations.

A key overall challenge for intergovernmental relations is achieving an appropriate balance of power. Although there is a need for central and provincial oversight, the intention of the Constitution is that such oversight be directed at supporting and assisting local government. The system of intergovernmental relations in South Africa is not conducive to cooperative governance, but appears in practice to be hierarchical. While it is understandable that central government should provide the legislative framework as well as oversee and evaluate service delivery, it has a constitutional obligation to support local government to become autonomous and capable sub-national units of government in all three areas: political, administrative and financial.

As it stands, the design of the intergovernmental governance system does not promote the objectives of decentralisation. It does not empower local government to become more distinctive and autonomous. The problem in many cases is not what to decentralise or whether a basic service should be provided by national, provincial or local government, but rather *how* to align shared rule or concurrency of the particular service among the various levels of government. How this is put into effect is something that cannot be legislated for.

Some of the service delivery problems do emanate from municipal incompetence, corruption and insufficient capacity. However, this study concludes that the ineffectiveness of municipalities goes beyond such human failings. The system of decentralised governance in South Africa has set up a range of intergovernmental relations that fluctuate between devolving autonomous responsibilities and delegating responsibilities that are inconsistent and vary from being highly prescriptive to being vague and ambiguous. Such a structural arrangement makes local government autonomy indistinct.

Insight into the nature of decentralisation in South Africa offers a different view of some of the current policy implementation issues facing local government. The manner in which local government has been delivering basic services has been influenced by the division of powers and functions as well as resources across the three spheres of government in a system that perpetuates hierarchical intergovernmental relations.

By separating decentralisation into three conceptual areas, this study was able to demonstrate that local government autonomy exists in some respects and not in others. It identified the limitations on local government autonomy, and some of the causes underlying this lack of autonomy by exploring what has been decentralised and what remains under central control. This study fills a gap in the literature on local government in South Africa by having developed a means of exploring to what extent the problems of municipalities in providing basic services are influenced by the political, administrative and financial configuration of the decentralised system of governance.

The general intention of decentralisation is to share power, resources and responsibilities with sub-national levels of government. The question often posed in the literature is how one

designs an optimal system of decentralisation.⁷¹² There is no template for successful decentralisation, nor was it the objective of this study to design one. Grindle aptly points out that there is no *right* strategy or *design* for decentralisation.⁷¹³ However, this thesis has shown that there are elements of design that can promote the devolution of local authority whereas others can impede or thwart local government autonomy.

Decentralisation is not presented here as an alternative to centralisation. This thesis does, however, identify the structural and procedural characteristics in the overall framework for decentralisation and argues that these further one's understanding of the existing shortcomings in service delivery that are confronting municipalities. The relationship between centralisation and decentralisation in South Africa is more complex than it might appear. It is not realistic to have either a fully centralised or fully decentralised system of government. Both options of centralised and decentralised government have relative advantages in their ability to deliver public services. The optimal governance system is one that combines the strengths of both while avoiding universal central autonomy.

While this study cannot conclusively report on the impact of decentralisation on basic service delivery in South Africa, it does identify some of the systemic and structural aspects that impact on the manner in which local municipalities provide basic services. It raises concerns that the basic service delivery obligations of local municipalities are strenuous and challenging, and will continue to be so long as local municipalities rely on or are controlled by other spheres of government in meeting their constitutional mandate.

The implementation of decentralisation in reality in South Africa contradicts the normative objectives of decentralisation as embodied in the legislative policy framework. There is a marked divergence between what the central government decentralises in a formal and legal sense, and what is experienced in practical terms. The challenge for sustainable basic service delivery at local government level in South Africa is for central government to better align the political, administrative and financial dimensions of decentralisation so that local municipalities can be supported and assisted in becoming autonomous and self-sufficient sub-national units of government.

⁷¹² Sharma, C.K.(2005). *When Does Decentralisation Deliver? The Dilemma of Design*. In *South Asian Journal of Socio-Political Studies*. Volume 6(1). Pp. 38-45.

⁷¹³ Grindle, M. (2007). *Going Local*. Princeton: Princeton University Press.

In closing, this thesis has demonstrated that decentralisation in South Africa encompasses a mixture of political, administrative and financial intergovernmental relationships. Each of these dimensions takes on forms of deconcentration, delegation and devolution. The overall finding of this study is that the ability of municipalities to provide sustainable basic services autonomously depends on the interaction between the three different forms of decentralisation within each of the three dimensions of decentralisation. While there may be no optimal design for decentralised governance in South Africa, there is a need to consider the interdependency of the political, administrative and financial powers and functions of the sphere of local government in order to make it both autonomous and viable.

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APPENDICES

APPENDIX 1: Structures of Governance

National Government	
Legislative Authority	<p>Parliament: Comprises the National Assembly (NA) and the National Council of Provinces (NCOP). The National Assembly is made up of members of Parliament, elected every five years. The NCOP was set up to ensure that provincial and local government are directly represented in Parliament. It is made up of representatives of provincial legislatures and local government. Each province has a set number of permanent and rotating representatives. The NCOP has to debate and vote on any law or policy that affects provincial or local government.</p>
Executive Authority	<p>The President is elected by Parliament and appoints a Cabinet of Ministers. They act as the executive committee of government and each Minister is the political head of a government department.</p>

Provincial Government	
Legislative Authority	<p>Provincial Legislature: 30-90 Members of Provincial Legislature (MPLs) elected by Proportional Representation (every five years) Portfolio Committees</p>
Executive Authority	<p>Premier (elected by the Legislature) Members of the Executive Council (MECs) appointed by the Premier to be the political heads of each provincial department. Director-General heads provincial government (public servant) Deputy Director-General head provincial departments (public servant)</p>

Local Government	
Legislative Authority	<p>Category C municipalities: Council comprises of 60% Ward Councillors & 40% Proportional Representation elected locally (every five years). Category A and B municipalities: Council comprises of 50% Ward Councillors & 50% Proportional Representation elected locally (every five years). Municipal Subcommittees</p>
Executive Authority	<p>Mayor (elected by Council). Executive Committee (elected by council). or Mayoral Committee (appointed by mayor). Oversees work of the Municipal Manager and department heads. In some very small municipalities the whole Council forms the executive – this is called a Plenary Executive. Municipal Manager appointed by Executive/Mayoral Council; responsible for employing staff and co-ordinating them to implement all programmes approved by council.</p>

APPENDIX 2: Extracts from the Municipal Structures Act (Act 117 of 1998) on the Composition of Category A, B & C Councils

Section 22: Election of Metropolitan and Local Councils

1. The council of a metropolitan or local municipality consists of councillors elected in accordance with Schedule 1-
 - (a) by voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that municipality; and
 - (b) by voters registered on that municipality's segment of the national common voters roll in the respective wards in that municipality, to directly represent the wards.
2. The number of ward councillors in a metropolitan or local council referred to in subsection (1) (b) must be equal to 50 per cent of the number of councillors determined for the municipality in terms of section 20. If the number of councillors determined in terms of section 20 is an uneven number, the fraction must be rounded off upwards.

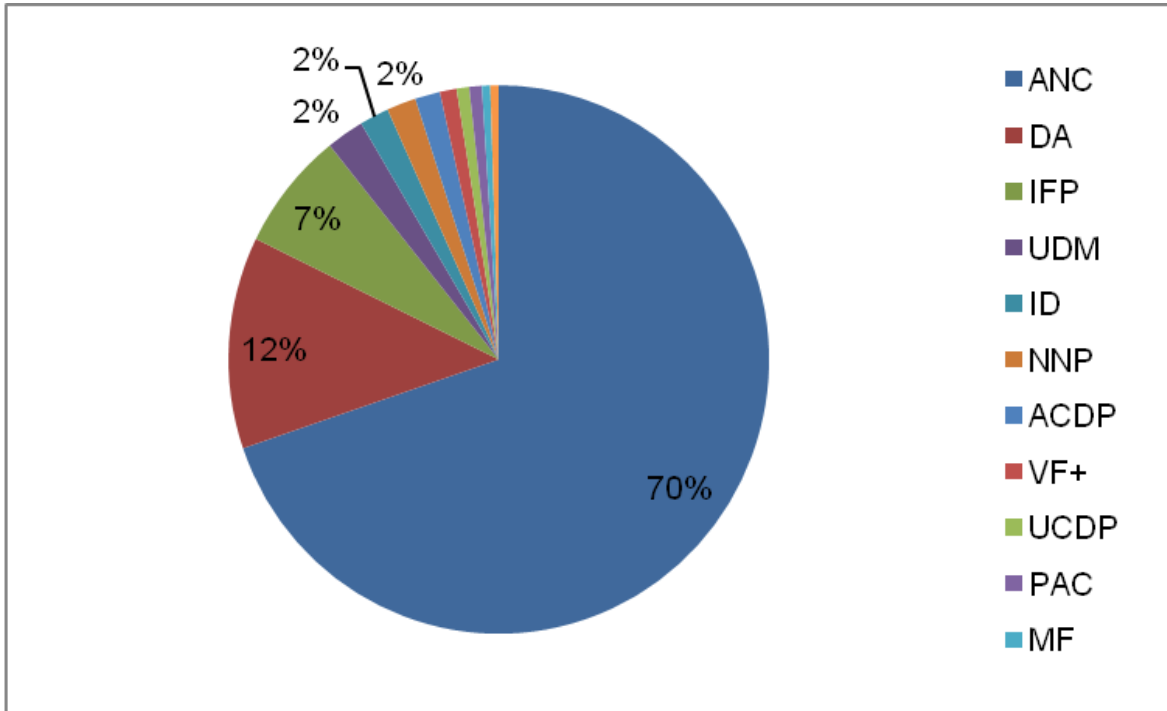
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Section 23: Election and Appointment of District Councils

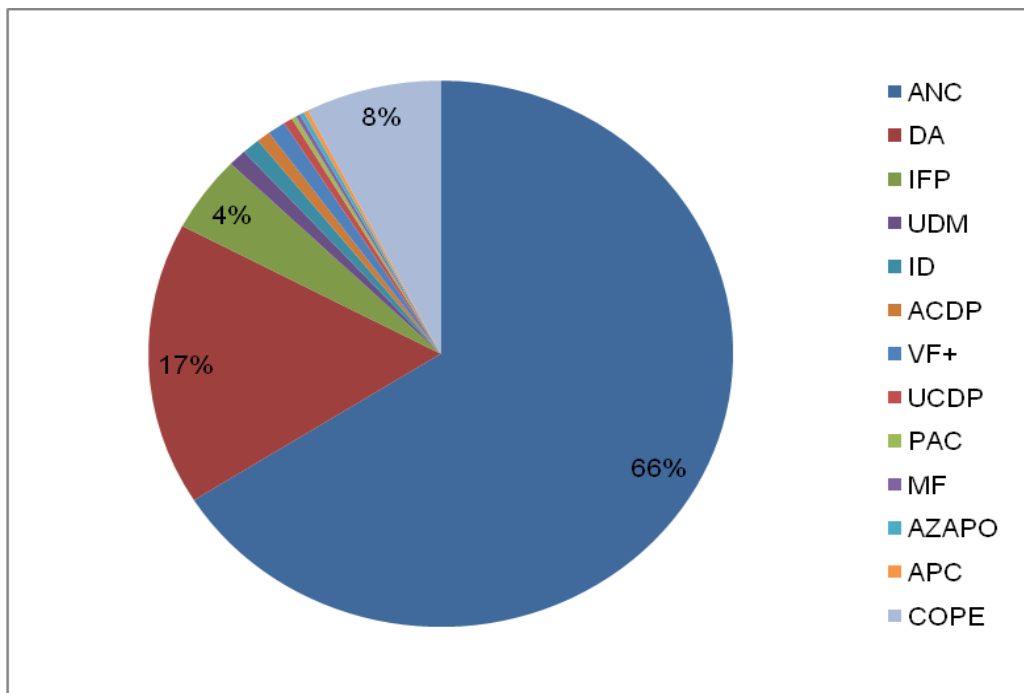
1. The council of a district municipality consists of-
 - a) councillors elected in accordance with Part 1 of Schedule 2 by voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that district municipality;
 - b) councillors appointed in accordance with Schedule 2 by the councils of the respective local municipalities within that district municipality, to directly represent those local municipalities; and
 - c) if the district municipality has a district management area, councillors elected in accordance with Part 1 of Schedule 2 by voters registered on that district municipality's segment of the national common voters roll in that area, to proportionally represent the parties that contested the election in that area.
2. The number of councillors representing local municipalities and district management areas in a district council referred to in subsection (1) (b) and (c) must be-
 - a) equal to 60 per cent (fractions to be disregarded) of the number of councillors determined for the municipality in terms of section 20 before any increase in terms of section 20 (5), plus the increase; and
 - b) allocated to the respective local councils and district management areas in accordance with Part 2 of Schedule 2.

APPENDIX 3: 2004 and 2009 National Election Results

2004 National Election Results



2009 National Election Result



**APPENDIX 4: Survey on Access to Basic Services in the Msunduzi Municipality
2005 and 2009 Survey Results**

Below are graphs illustrating my survey results on the perceptions of Ward Committee Meetings in Msunduzi Municipality done by myself during 2005. The survey sample was 500, executed in low income wards.

2009 Survey Results

Below are graphs illustrating my survey results of the perceptions of Ward Committee Meetings in Msunduzi Municipality done by myself during 2009. The survey sample size was 100, executed in low income wards.

APPENDIX 5: Schedule 4: Functional Areas of Concurrent National and Provincial Legislative Competence (The Constitution of South Africa. Act 108 of 1998).

Schedule 4 Part A

- Administration of indigenous forests
- Agriculture
- Airports other than international and national airports
- Animal control and diseases
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Consumer protection
- Cultural matters
- Disaster management
- Education at all levels, excluding tertiary education
- Environment
- Health services
- Housing
- Indigenous law and customary law, subject to Chapter 12 of the Constitution
- Industrial promotion
- Language policy and the regulation of official languages to the extent that the provisions of Section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence
- Media services directly controlled or provided by the provincial government, subject to Section 192
- Nature conservation, excluding national parks, national botanical gardens and marine resources
- Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence
- Pollution control
- Population development
- Property transfer fees
- Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5
- Public transport
- Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
- Regional planning and development
- Road traffic regulation
- Soil conservation
- Tourism
- Trade
- Traditional leadership, subject to Chapter 12 of the Constitution
- Urban and rural development
- Vehicle licensing
- Welfare services

Schedule 4: Part B

- The following local government matters to the extent set out in section 155(6)(a) and (7):
- Air pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Firefighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Stormwater management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.

APPENDIX 6: Schedule 5: Functional Areas of Exclusive Provincial Legislative Competence

Schedule 5 Part A

- Abattoirs
- Ambulance services
- Archives other than national archives
- Libraries other than national libraries
- Liquor licences
- Museums other than national museums
- Provincial planning
- Provincial cultural matters
- Provincial recreation and amenities
- Provincial sport
- Provincial roads and traffic
- Veterinary services, excluding regulation of the profession

Schedule 5 Part B

The following local government matters to the extent set out for provinces in section 155(6)(a) and (7):

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking

APPENDIX 7: Basic Sanitation Alternatives

<p>Unimproved pit toilet (below RDP level): A top structure over a pit. Costs vary.</p>
<p>Ventilated improved pit (VIP) toilet: A top structure over a pit, vented by a pipe with a fly screen. The pit may be lined or unlined depending on soil conditions. Costs start at R600 to build and R60 per year to empty the waste if emptied once in five years.</p>
<p>Ventilated improved double pit (VIDP) toilet: A single top structure over two shallow pits side by side. Only one pit is in use at a time and each is vented by a pipe with a fly screen. Pits are generally lined and the central wall is sealed. Costs begin at R2500 to install and R35 per year to operate and maintain.</p>
<p>Composting toilets, including urine diversion and desiccating systems: A single top structure over a sealed container with access for removal of composted waste. Urine may be diverted and a vent pipe helps dry the waste. Costs begin at R3000 for commercial systems and operation and maintenance costs at R35 per year.</p>
<p>Pour-flush latrine or aqua-privy: A toilet with water-seal. Waste is washed away through a short pipe or chute to a waste collecting and soakaway disposal system. The privy is accepted internationally where users squat and water is used for anal cleansing. It fails when people throw unauthorised objects in to the toilet, or there is no affordable emptying service. Installation begins at R2000 and removal costs at R150 per year.</p>
<p>Septic tank and soakaway: An in-house full flush toilet connected via plumbing to a watertight underground digester (settling chamber) with liquids allowed to soak into the ground. Costs to install begin at R7000 and annual costs at R200, depending on how often it is emptied.</p>
<p>Flush toilets with conservancy tanks: Waste is flushed into a tank from where it cannot flow into the surrounding environment and which must be emptied. Costs depend on the size of tank and how often it is emptied.</p>
<p>Small bore solids-free sewer: An in-house flush toilet discharging to a septic tank where solids settle out. Liquids go through a small sewer into a central collection sump or existing sewer. Costs depend on size of tank and how often it is emptied.</p>
<p>Full bore waterborne sewerage: An in-house flush toilet which connects to sewer which, in turn, flows to a waste water treatment plant. This costs R6000 to install and operating costs are about R400 per year.</p>
<p>Shallow sewerage: An in-house toilet flushed with less water than usual and through smaller pipes at shallower levels with on-site inspection chambers. Internationally this saves up to 50% on water use but is still being tested in South Africa.</p>
<p>Chemical toilets: Stand-alone units which use chemicals to render excreta harmless and odourless. Expensive and generally used as temporary. Most authorities are trying to discontinue their use.</p>
<p>Bucket toilet (unhygienic and not recommended): A top structure with a seat over a bucket. The bucket is periodically removed and contents disposed of. Widely used but poses health risk to collectors. Most authorities are trying to discontinue these - and they are expensive to operate and maintain.</p>
<p>Communal toilets (not recommended for household use): Toilet blocks may be based on wet or dry systems. These require regular cleaning and maintenance.</p>

Source: Adapted from the Department of Water Affairs and Forestry. (2002). Sanitation for a Healthy Nation

APPENDIX 8: Free Basic Service Levels

Service Areas	Service Levels
Free Basic Water	<p>6kl per household of 8 people per month. Provided through:</p> <ul style="list-style-type: none"> ▪ Communal standpipes ▪ Rudimentary systems (hand pumps, boreholes etc) ▪ Prepaid communal street tap ▪ Low pressure trickle feed yard tank ▪ Low pressure manually operated yard tank ▪ Low pressure regulated yard tank ▪ Medium pressure manually operated roof tank ▪ Medium pressure regulated roof tank ▪ Full pressure conventional house connection ▪ Full pressure prepaid house connection
Free Basic Electricity	<p>An amount of 50 kWh per month. Provided through:</p> <ul style="list-style-type: none"> ▪ Grid ▪ Non Grid (Energy Alternatives)
Free Basic Sanitation	<p>Provide through:</p> <ul style="list-style-type: none"> ▪ Ventilated Improved Pit Toilet (VIP) ▪ Ventilated Improved Double Pit Toilet ▪ Urine Diversion Toilet ▪ Septic tank ▪ Shallow sewerage ▪ Full water borne sewerage

Source: Adapted from the Department of Provincial and Local Government. (2005) Guidelines for the Implementation of the National Indigent Policy by Municipalities.

APPENDIX 9: Extracts from the Constitution (Act 108 of 1996) Regarding Fiscal Decentralisation

214. Equitable shares and allocations of revenue

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1. An Act of Parliament must provide for
 - a. the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
 - b. the determination of each province's equitable share of the provincial share of that revenue; and
 - c. any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made.
2. The Act referred to in subsection (1) may be enacted only after the provincial governments, organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered, and must take into account
 - a. the national interest;
 - b. any provision that must be made in respect of the national debt and other national obligations;
 - c. the needs and interests of the national government, determined by objective criteria;
 - d. the need to ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them;
 - e. the fiscal capacity and efficiency of the provinces and municipalities;
 - f. developmental and other needs of provinces, local government and municipalities;
 - g. economic disparities within and among the provinces;
 - h. obligations of the provinces and municipalities in terms of national legislation;
 - i. the desirability of stable and predictable allocations of revenue shares; and
 - j. the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

215. National, provincial and municipal budgets

1. National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector.
2. National legislation must prescribe
 - a. the form of national, provincial and municipal budgets;
 - b. when national and provincial budgets must be tabled; and
 - c. that budgets in each sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation.
3. Budgets in each sphere of government must contain
 - a. estimates of revenue and expenditure, differentiating between capital and current expenditure;
 - b. proposals for financing any anticipated deficit for the period to which they apply; and

- c. an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

216. Treasury control

1. National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing
 - a. generally recognised accounting practice;
 - b. uniform expenditure classifications; and
 - c. uniform treasury norms and standards.
2. The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

217. Procurement

1. When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
2. Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for
 - a. categories of preference in the allocation of contracts; and
 - b. the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
3. National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

219. Remuneration of persons holding public office

1. An Act of Parliament must establish a framework for determining-
 - a. the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders; and
 - b. the upper limit of salaries, allowances or benefits of members of provincial legislatures, members of Executive Councils and members of Municipal Councils of the different categories.

Financial and Fiscal Commission

220. Establishment and functions

1. There is a Financial and Fiscal Commission for the Republic which makes recommendations envisaged in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation.
2. The Commission is independent and subject only to the Constitution and the law, and must be impartial.
3. The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors, including those listed in section 214(2).

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221. Appointment and tenure of members

1. The Commission consists of the following women and men appointed by the President, as head of the national executive:
 - a. A chairperson and deputy chairperson;
 - b. three persons selected, after consulting the Premiers, from a list compiled in accordance with a process prescribed by national legislation;
 - c. two persons selected, after consulting organised local government, from a list compiled in accordance with a process prescribed national legislation; and
 - d. two other persons.
2. Members of the Commission must have appropriate expertise.
3. Members serve for a term established in terms of national legislation. The President may remove a member from office on the ground of misconduct, incapacity or incompetence.

Provincial and Local Financial Matters

226. Provincial Revenue Funds

1. There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid, except money reasonably excluded by an Act of Parliament.
2. Money may be withdrawn from a Provincial Revenue Fund only
 - a. in terms of an appropriation by a provincial Act; or
 - b. as a direct charge against the Provincial Revenue Fund, when it is provided for in the Constitution or a provincial Act.
3. Revenue allocated through a province to local government in that province in terms of section 214(1), is a direct charge against that province's Revenue Fund.
4. National legislation may determine a framework within which
 - a. a provincial Act may in terms of subsection (2) (b) authorise the withdrawal of money as a direct charge against a Provincial Revenue Fund; and
 - b. revenue allocated through a province to local government in that province in terms of subsection (3) must be paid to municipalities in the province.

227. National sources of provincial and local government funding

1. Local government and each province
 - a. is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it; and
 - b. may receive other allocations from national government revenue, either conditionally or unconditionally.
2. Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.
3. A province's equitable share of revenue raised nationally must be transferred to the province promptly and without deduction, except when the transfer has been stopped in terms of section 216.
4. A province must provide for itself any resources that it requires, in terms of a provision of its provincial constitution, that are additional to its requirements envisaged in the Constitution.

228. Provincial taxes

1. A provincial legislature may impose
 - a. taxes, levies and duties other than income tax, value-added tax, general sales tax, rates on property or customs duties; and
 - b. flat-rate surcharges on any tax, levy or duty that is imposed by national legislation, other than on corporate income tax, value-added tax, rates on property or custom duties.
2. The power of a provincial legislature to impose taxes, levies, duties and surcharges
 - a. may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries, or the national mobility of goods, services, capital or labour; and
 - b. must be regulated in terms of an Act of Parliament, which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

229. Municipal fiscal powers and functions

A Municipal Council may not delegate the passing of by-laws; budgeting; the imposition of rates, taxes, levies and duties; nor the raising of loans.⁷¹⁴

1. Subject to subsections (2), (3) and (4), a municipality may impose
 - a. rates on property and surcharges on fees for services provided by or on behalf of the municipality; and
 - b. if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.
2. The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties

⁷¹⁴ Section 160(2) of the Constitution of South Africa. Act 108 of 1996.

- a. may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
 - b. may be regulated by national legislation.
3. When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria:
 - a. The need to comply with sound principles of taxation.
 - b. The powers and functions performed by each municipality.
 - c. The fiscal capacity of each municipality.
 - d. The effectiveness and efficiency of raising taxes, levies and duties.
 - e. Equity.
4. Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.
5. National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.

230. Provincial and municipal loans

1. A province may raise loans for capital or current expenditure in accordance with national legislation, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year.
2. National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

230A. Municipal loans

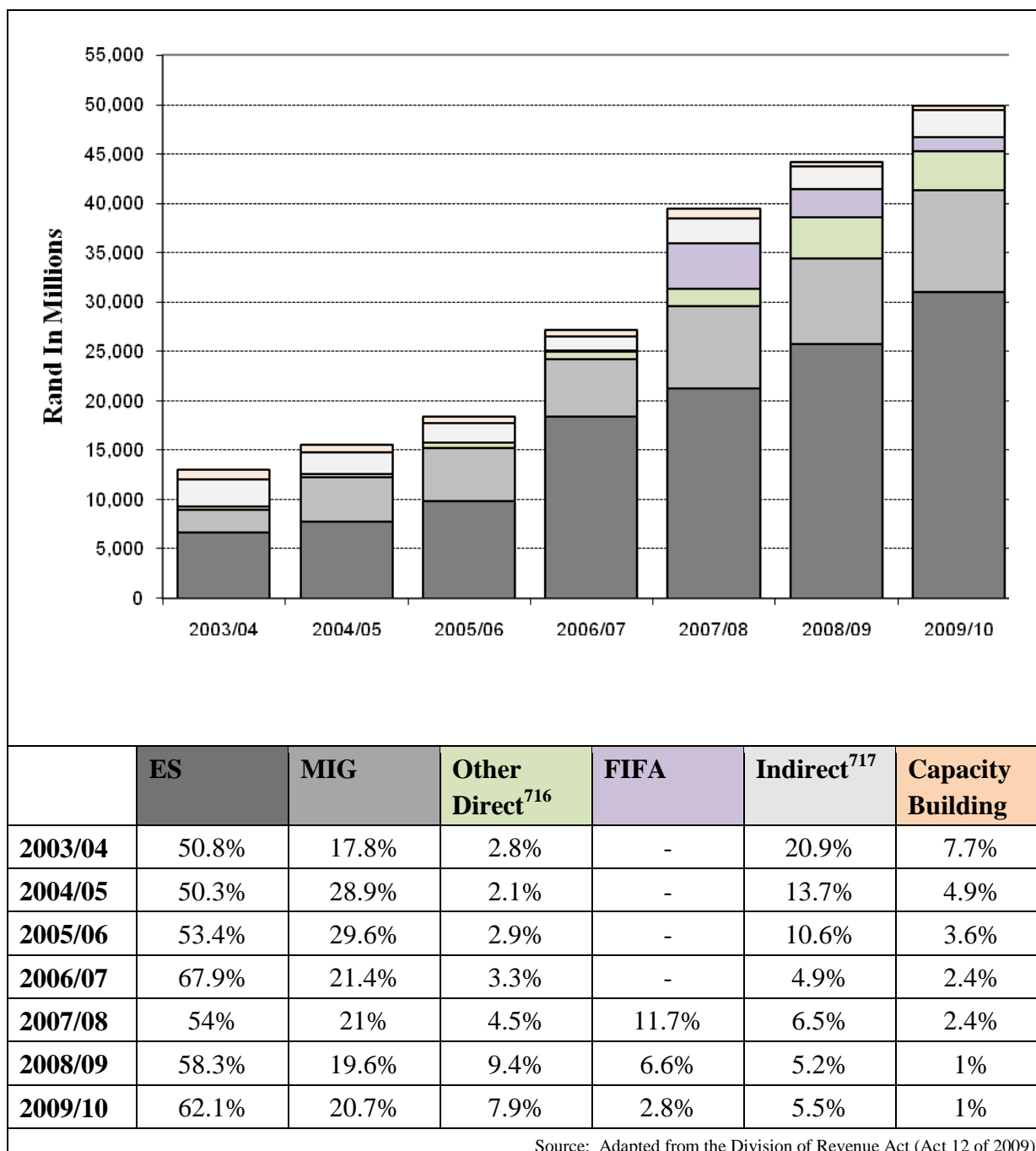
1. A Municipal Council may, in accordance with national legislation-
 - a. raise loans for capital or current expenditure for the municipality, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year; and
 - b. bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality.
2. National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

APPENDIX 10: Intergovernmental Transfers to Local Government 2003/04 - 2009/10⁷¹⁵

R Million	2003/4	2006/07	2009/10
Equitable Share	6 624	18 421	31 011
Equitable Share	6 350	18 058	30 156
Water services operating subsidy	273	363	855
Municipal Infrastructure Grant	2 323	5 809	10 330
Other direct transfers:	364	909	3 922
Integrated national electrification programme	245	391	897
Public transport infrastructure and systems grant	-	518	2 325
Neighbourhood development partnership grant	-	-	700
Building for sports & recreation programme grant	119	-	-
2010 FIFA World Cup	-	600	1400
Infrastructure: Indirect Transfers	2 727	1 333	2 741
Water services operating subsidy grant	817	440	-
Community based public works programme grant	12	-	-
Implementation of water services projects (capital)	112	-	-
Integrated national electrification programme	796	893	1 421
Backlogs in water & sanitation at clinics & schools	-	-	350
Backlogs in the electrification of clinics & schools	-	-	150
Neighbourhood development partnership grant	-	-	170
Capacity Building	998	664	500
Municipal systems improvement programme grant	150	200	200
Local government restructuring grant	539	265	-
Local government financial management grant	280	145	300
Other Recurrent Transfers	-	-	488
FIFA World Cup host city operating grant	-	-	488
Total	13 036	27 736	50 392

⁷¹⁵ Division of Revenue Act (2009).

Intergovernmental Transfers to Local Government: Figures in Percentage Terms



⁷¹⁶ Is conditionally allocated to other infrastructure programmes related to transport, electricification, neighbourhood development and sports.

⁷¹⁷ Refers to conditional infrastructure grants targeting public works programmes as well as backlogs eradication at schools and clinics.

APPENDIX 11: Conditional Grants

Local Government Restructuring Grant	
Transferring Department	National Treasury
Purpose	To modernize large municipalities and to make them more effective and efficient service delivery authorities through assisting them to restructure their organisations, functions and fiscal positions. National government will support municipal plans to the extent that they offer significant benefits to national economic stability and development.
Reason not incorporated in equitable share	The grant supports implementation of municipal restructuring exercises necessary to avoid financial distress and any risks to the national fiscus. It will be incorporated into the equitable share following an assessment that large municipalities are on a sustainable growth trajectory.

Implementation of Water Services Projects	
Transferring Department	Department of Water Affairs and Forestry
Purpose	To fund bulk connection and internal infrastructure for basic water services schemes for low-income households. The allocation will be used to address that backlog in water sanitation and with water supply being provided at a community level on the basis of 25 litres of water per day per capita and sanitation at household levels on the basis of a VIP per household.
Reason not incorporated in equitable share	The purpose of this allocation is to provide the capital expenditure required to address the backlog in basic water supply and sanitation to low-income household. This backlog is being addressed by an on-going multi-year programme that commenced in 1994 and is projected to continue to 2007.

Consolidated Municipal Infrastructure Programme	
Transferring Department	Department of Provincial and Local Government
Purpose	To provide internal bulk, connector and internal infrastructure and community services and facilities for low-income households.
Reason not incorporated in equitable share	This is a specific capital transfer focused on the national policy priority of ensuring all South Africans have access to at least a basic level of municipal services. Through CMIP Government directly support the Integrated and Sustainable Rural Development Strategy (ISRDS) and the Urban Renewal Strategy (URS) as well as the Housing Programme. CMIP also demonstrates to municipalities how to implement infrastructure projects to achieve developmental

	outcomes as well as new innovations that could be more effective and efficient to both municipality and community.
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Local Economic Development and Social Plan Measures Grant	
Transferring Department	Department of Provincial and Local Government
Purpose	<p>To support planning and implementation of job creation and poverty alleviation projects. The following conditions apply:</p> <ul style="list-style-type: none"> - The projects/business opportunity studies identified by municipalities must meet the criteria of the LED and Social Plan Measure Grant. - The projects/study business plans will act as a contract between the Department of Provincial and Local Government and the municipality. - Municipalities must submit monthly reports in terms of the Division of Revenue Act 201 and the Poverty Alleviation reporting requirements. - Number of business opportunity studies completed. - Number of short-term jobs created. - Number of long-term jobs created. - Person days of accredited/unaccredited training. <p>Business, infrastructure developed, for example, business hives, arts and crafts centers, hydroponic tunnels, irrigation schemes.</p>
Reason not incorporated in equitable share	<p>The development mandate for municipalities to promote social and economic development is relatively new. The LED and Social Plan Measures Grant is, therefore, a policy instrument in re-directing local government towards developmental outcomes.</p> <p>The establishment of the grant is intended to address large-scale job losses within the country and the targeting of poverty through the Poverty Alleviation Fund.</p>

Community Based Public Works Programme	
Transferring Department	Department of Public Works
Purpose	Creation of community assets in rural disadvantages communities and empowerment of the communities to manage the facilities in co-operation with the local municipality. Employment of community during construction and promotion of long-term jobs associated with the facilities.
Reason not incorporated in equitable share	A conditional grant is necessary in order to ensure that appropriate facilities are created within target communities, that proper sustainability planning takes place and that employment targets are met.

Urban Transport Fund	
Transferring Department	Department of Transport
Purpose	To promote the planning of intermodal land transport infrastructure and operations, the facilitation of integrated land use and land transport planning, the development of guidelines in this regard and to initiate demonstration projects in line with the Urban Transport Act, 1977.
Reason not incorporated in equitable share	National priorities are determined annually based on the National Department Business Poland.

Building for Sport and Recreation Programme	
Transferring Department	Department of Sport and Recreation
Purpose	Promotion of sport and recreation within disadvantaged communities by development of new and upgrading of existing sports facilities and empowerment of the communities to manage the facilities in cooperation with the local municipality. Employment of community during construction and promotion of long-term jobs associated with the facilities.
Reason not incorporated in equitable share	A conditional grant is necessary in order to ensure: <ul style="list-style-type: none"> - That appropriate facilities are created within target communities; - That proper sustainability planning takes place; - That municipalities and communities are empowered to promote sport; and - That employment targets are met.

Water supply and water-borne sewerage disposal schemes	
Transferring Department	Department of Water Affairs and Forestry
Purpose	To honour existing subsidy commitments in terms of Government Notice (GN) No. 1341 of 30 June 1989 (as amended) and GN No. 247 of 6 February 1987 (as amended) to municipalities who have installed water services works and obtained approval for subsidies in terms of section 162 of the Water Act (Act No. 54 of 1956).
Reason not incorporated in equitable share	This is a specific capital transfer to meet historical obligations. At current payment levels this is projected to take up to 13 years.

Water Services Operating Subsidy	
Transferring Department	Department of Water Affairs and Forestry
Purpose	To augment the Water Trading Account on the Department of Water Affairs and Forestry and thus provide subsidies to users of water schemes that are directly operated by the department. As water service provision is a functional competence of local government, the department is preparing to transfer these schemes, with associated staff and subsidies to municipalities. This transfer will be converted into a conditional grant in the medium term to facilitate the transfer process.
Reason not incorporated in equitable share	The grant will facilitate the transfer of water services schemes to municipalities, following which they will be incorporated into the equitable share.

National Electrification Programme	
Transferring Department	Department of Minerals and Energy (Via National Electricity Regulator and funded via the levy on electricity sales.)
Purpose	To implement the national electrification programmes through providing capital subsidies to municipalities to: <ul style="list-style-type: none"> - Accelerate the electrification of permanently occupied residential dwellings that are situated in legally authorized areas set of by Local Government for formal or informal permanent settlement in designated township development areas where Eskom does not supply electricity. - Maximize the number of new connections in the furtherance of electrification in historically under-supplied areas. - Contribute towards leveling the playing field between Eskom distributors and local authority distributors.
Reason not incorporated in equitable share	This is a specific capital transfer in support of the electrification programme.

Land Restitution, Land Reform and Land Tenure Grant	
Transferring Department	Department of Land Affairs
Purpose	To transfer funds or assets to municipalities for the development of municipal infrastructure associated with the implementation of land reform projects.
Reason not incorporated in equitable share	This is a specific capital transfer to assist municipalities to develop infrastructure in support of land reform and restitution projects.

Local Government Financial Management Grant	
Transferring Department	Department of National Treasury
Purpose	To promote and support reforms to municipal management practices, including the modernisation of budgeting, financial management, accounting and monitoring systems in municipalities.
Reason not incorporated in equitable share	Due to the critical need to develop municipal financial capacity as the foundation upon which other reforms can be built.

Municipal Systems Improvement Programme	
Transferring Department	Department of Provincial and Local Government
Purpose	To support municipalities in implementing new systems as provided for in the Municipal Systems Act, 2000, including integrated development planning, performance management, and related local public sector management reforms, which must be within that municipality's budgetary framework. In addition, it will also cover historical commitments by the Department of Land Affairs from the form LDO grant.
Reason not incorporated in equitable share	New grant to assist with the implementation of the Municipal Systems Act, 2000 and develop municipal capacity.

Local Government Transformation Grant	
Transferring Department	Department of Provincial and Local Government
Purpose	To assist municipalities with significant once-off costs of amalgamating and establishing new structures following the municipal demarcation process.
Reason not incorporated in equitable share	Specific and conditional funding to meet identified transitional costs.

Local Government Support Grant	
Transferring Department	Department of Provincial and Local Government
Purpose	To assist medium and small municipalities experiencing severe financial problems to restructure their financial positions and organisation over the medium term.
Reason not incorporated in equitable share	According to section 154 (1) of the Constitution, the national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of their municipalities to manage their own affairs, to exercise their powers and to perform their functions.

APPENDIX 12: Projected Average Household Growth Rates in South Africa

YEAR	Households	Households % Growth Rates
2001	11,560,370	
2002	11,859,597	2.6%
2003	12,142,786	2.4%
2004	12,415,422	2.2%
2005	12,676,972	2.1%
2006	12,929,389	2.0%
2007	13,171,503	1.9%
2008	13,412,776	1.8%
2009	13,654,415	1.8%
2010	13,901,499	1.8%
2011	14,155,017	1.8%
2012	14,416,603	1.8%
2013	14,689,879	1.9%
2014	14,975,097	1.9%
2015	15,274,881	2.0%
2016	15,587,093	2.0%
2017	15,913,537	2.1%
2018	16,256,442	2.2%
2019	16,614,917	2.2%
2020	16,989,407	2.3%
2021	17,379,366	2.3%

Source: Adapted from Van Aardt, C. and Lamb, M. (2007). *Population and Household Projections 2001-2021*. Bureau of Market Research. University of South Africa.